

## Subpart A - Procedures for NRCS-Assisted Programs

### 410.0 Introduction

- A. On August 29, 1979, the Natural Resources Conservation Service (NRCS) published the final rules (7 CFR 650) for implementation of the National Environmental Policy Act (NEPA) in NRCS-assisted project actions. An updated version of the supplementary information presented in the NRCS rules (August 29, 1979) for compliance with NEPA is presented here as introductory material for Subpart A of the part. The NRCS-NEPA rule was effective on August 29, 1979, and adopted the Council on Environmental Quality (CEQ) (November 29, 1978), NEPA regulations (40 CFR 1500-1508) in total. The CEQ regulations were distributed with the final NRCS-NEPA procedure to all NRCS offices on September 18, 1979.
- B. The August 29, 1979, rule was a total revision of the previous procedures used by NRCS to comply with NEPA. The August 29, 1979, rule was expanded to include procedures for implementing NEPA in all NRCS-assisted programs and to comply with the regulations of CEQ, 40 CFR, Parts 1500-1508. Several data-gathering and inventorying programs of NRCS are categorically excluded so that neither an environmental assessment nor an environmental impact statement is normally required.
- C. NRCS introduced a new phrase, "environmental evaluation (EE)," to describe the interdisciplinary planning that is carried out before NRCS takes action in any program it administers. The phrase "environmental assessment (EA)" was formerly used by NRCS to describe this part of the planning process. The definition of "environmental assessment" in the new CEQ regulations, 40 CFR 1508.9 (General Manual (GM-190) Title 190, Subpart C, Exhibit, Section 410.30), depicts a document rather than a process, making it necessary for NRCS to use a new phrase to describe its environmental process.
- D. The NRCS-NEPA rule was developed in consultation with the staff of CEQ and is consistent with the NEPA procedures of the Secretary of Agriculture.
- E. During the 45-day commenting period for the proposed NRCS-NEPA rule (May 2, 1979), 7 letters of comment were received. Two letters were from Federal agencies, one was from a State agency, two were from State conservation associations, and two were from individuals. All written comments were considered in developing the final rules that are shown in this directive.

### 410.1 Purpose

- A. This rule prescribes procedures by which NRCS is to implement the provisions of NEPA. NRCS 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 regulations, 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 reference. 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 ensure 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.
  - (4) Documents are to concentrate on the issues that are timely and significant to the action in question, rather than amassing needless detail.
  - (5) Environmental consequences are considered in decision making. They allow NRCS to assist individuals and non-Federal public entities to take actions that protect, enhance, and restore environmental quality.
  - (6) It is possible to identify early any actions that have significant effects on the human environment to avoid delays in decision making.

### 410.2 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.

### 410.3 Policy

#### A. NRCS Mission

The NRCS mission, as stated in its NEPA rules, 7 CFR 650, August 29, 1979, is to provide assistance that will allow use and management of ecological, cultural, natural, physical, social, and economic resources by striving for a balance among 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:

- (i) Can maintain safe, healthful, productive, and aesthetically and culturally pleasing surroundings that support diversity of individual choices.
- (ii) 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:

- (i) 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.
- (ii) Provide technical and financial assistance through a systematic interdisciplinary approach to planning and decision making to ensure a balance between the natural, physical, and social sciences.
- (iii) Consider environmental quality equal to economic, social, and other factors in decision making.
- (iv) Ensure 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.
- (v) Counsel with highly qualified and experienced specialists from within and outside NRCS in many technical fields as needed.
- (vi) Encourage broad public participation in defining environmental quality objectives and needs.
- (vii) 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.
- (viii) Encourage local sponsors to review with interested parties the operation and maintenance programs of completed projects to ensure that environmental quality is not degraded.
- (ix) 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 ensure 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.
- (x) 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.
- (xi) 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.
- (xii) Advocate the protection of valuable wetlands, threatened and endangered animal and plant species and their habitats, and designated ecosystems.
- (xiii) Advocate the conservation of natural and man-made scenic resources to ensure that NRCS-assisted programs or activities protect and enhance the visual quality of the landscape.
- (xiv) Advocate and assist in actions to preserve and enhance the quality of the Nation's waters.

#### 410.4 Definition of Terms

A. Some terms defined in the NRCS-NEPA rule are presented here to improve the readability and understanding of this directive. In addition, in [GM-190, Subpart C, Exhibit, Section 410.30](#), the Terminology and Index section from the CEQ-NEPA rules is also presented for reference of other definitions.

#### B. Channel Realignment

Channel realignment includes the construction of a new channel or alignment and may include the clearing, snagging, widening, and/or deepening of the existing channel. (see [GM-190, Subpart B, Related Environmental Concerns, Section 410.27](#)).

#### C. Environmental Assessment (EA) (see [GM-190, Subpart C, Exhibit, Section 410.30](#))

An EA 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 (EIS) or a finding of no significant impact.

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

(iii) Facilitates preparation of an EIS when one is necessary.

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

#### D. Environmental Evaluation (EE)

The EE (formerly referred to by NRCS as an EA) 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 EE for a program, regulation, or individual action is used to determine the need for an EA or an EIS. It also aids in the consideration of alternatives and the identification of available resources. The EE process is undertaken to:

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

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

(iii) 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 Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies are considered.

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

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

#### E. Federally Assisted Actions

These actions are planned and carried out by individuals, groups, or local units of government largely on non-Federal land with technical and/or financial assistance provided by NRCS.

#### F. Interdisciplinary Planning

NRCS uses an interdisciplinary EE 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.

#### G. 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. Nonproject technical and/or financial assistance may result in the land user installing field terraces, waterways, field leveling, on-farm drainage systems, farm ponds, pasture management, conservation tillage, critical area stabilization, and other conservation practices.

#### H. Notice of Intent (NOI) (40 CFR 1508.22, [GM-190, Subpart C, Exhibit, Section 410.30](#))

An NOI 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 NOI is to be published in the Federal Register (FR), circulated to interested agencies, groups, and individuals, and published in one or more newspapers serving the area of the proposed action.

#### I. 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.

#### J. Record of Decision (ROD) (40 CFR 1505.2, [GM-190, Subpart C, Exhibit, Section 410.30](#))

A ROD is a concise written rationale by the responsible Federal official regarding implementation of a proposed action requiring an EIS. This was previously defined by NRCS as a Statement of Findings (SOF).

#### K. Responsible Federal Official (RFO)

The NRCS Chief is the RFO for compliance with NEPA regarding proposed legislation, programs, legislative reports, regulations, and program EIS's. NRCS State Conservationists (STC) or their designee are the RFO for compliance with the provisions of NEPA in other NRCS-assisted actions.

L. Significantly (40 CFR 1508.27, [GM-190, Subpart C, Exhibit, Section 410.30](#))

"Significantly," as used in NEPA, requires considerations of both context and intensity.

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

N. Intensity

(1) 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.

(2) 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 (NRHP), 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 (ESA) 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.

O. Finding of No Significant Impact (FNSI) (40 CFR 1508.13, [GM-190, Subpart C, Exhibit, Section 410.30](#))

"Finding of No Significant Impact" is a document in which the Federal agency briefly presents the reasons why an action not otherwise excluded (Section 1508.4, see [GM-190, Subpart C, Exhibit, Section 410.30](#)) will not have a significant effect on the human environment, and an EIS, therefore, will not be prepared. It shall include the EA, or a summary of it, and note other environmental documents related to it (Section 1501.7(a)(5), see [GM-190, Subpart C, Exhibit, Section 410.30](#)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

### 410.5 Environmental Evaluation in Planning

A. General

The 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 EE is used. Findings of the EE process are to be documented on the National Environmental Evaluation CPA- 52 form.

B. Procedures

NRCS's Guide for Environmental Assessment (now called Environmental Evaluation), issued in March 1977 and published in the FR on August 8, 1977, provides guidance for conducting an EE (42 FR Parts 40123-40167).

C. Decision Points

The NEPA in NRCS Planning flowchart illustrates the decision points for compliance with NEPA in NRCS decision making.

[Click here for a copy of the NEPA in NRCS Planning](#)

### 410.6 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.
- (5) River Basin Studies under Section 6 of Public Law (PL) 83-566 as amended - 7 CFR Part 621.

B. The EE performed by the RFO when any new action under these programs is planned 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. In addition to the programs listed above, all of the conservation and restoration actions and activities identified below are categorical exclusions requiring documentation in accordance with 7 CFR §650.6 that address whether extraordinary circumstances are determined to exist. This documentation is to be done through use of the EE process and documented on the national Form CPA-52. The use of the following categorical exclusions for a proposed action 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 21 conservation and restoration categorical exclusions requiring documentation include:

- (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.
- (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, rip-rap, 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:
  - (i) Installation of fences.
  - (ii) 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.
- (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.

D. NRCS restoration and conservation actions and activities identified above 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 7 CFR Section 650.5 to evaluate proposed activities for extraordinary circumstances and document the determination that the categorical exclusions applies. The extraordinary circumstances address the significance criteria provided in 40 CFR Section 1508.27.

E. The extraordinary circumstances that must be evaluated for the applicability of a categorical exclusion include determining that:

- (1) The proposed action cannot cause significant effects on public health or safety.
- (2) 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.
- (3) The effects of the proposed action on the quality of the human environment cannot be highly controversial.
- (4) The proposed action cannot have highly uncertain effects, including potential unique or unknown risks on the human environment.
- (5) The proposed action cannot include activities or conservation practices that establish a potential precedent for future actions with significant impacts.
- (6) The proposed action is known to have or reasonably cannot be expected to have potentially significant environmental impacts to the quality of the human environment either individually or cumulatively over time.
- (7) 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 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.
- (8) The proposed action will not violate Federal or other applicable law and requirements for the protection of the environment.

F. In the absence of any extraordinary circumstances as determined through NRCS's EE review process, the activities will be able to proceed without preparation of an EA or EIS.

G. 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 as required in this section, the proposed action must also meet one or more of the following criteria as applicable:

- (1) Be designed to mitigate soil erosion, sedimentation, and downstream flooding.
- (2) Require disturbed areas to be vegetated with adapted species that are neither invasive nor noxious.
- (3) 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."
- (4) Incorporate the applicable NRCS conservation practice standards as found in the Field Office Technical Guide.
- (5) Not require substantial dredging, excavation, or placement of fill.
- (6) Not involve a significant risk of exposure to toxic or hazardous substances.

#### 410.7 When to Prepare an EIS

- A. The following are categories of NRCS action used to determine whether or not an EIS is to be prepared.
- B. 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 EE indicates there may be significant cumulative impacts on the human environment (GM-190, Subpart A, Procedures for NRCS-Assisted Programs, Section 410.7).
  - (4) Other major Federal actions that are determined, after the EE, to affect significantly the quality of the human environment (GM-190, Subpart A, Compliance with NEPA, Section 410.7). 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.
- C. The RFO determines the need for an EIS for each action, program, or regulation. An EE, 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:
- D. Environmental Impact
- Will the proposed action significantly affect the quality of the human environment (40 CFR 1508.14, GM-190, Subpart C, Exhibit, Section 410.30)? For example, will it significantly alter or destroy valuable 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?
- E. Adverse Environmental Effects
- Will the action involve adverse environmental effects that cannot be avoided? What are the important environmental amenities that would be lost if the proposed action were implemented?
- F. Alternatives
- Are there alternatives that would achieve the planning objectives but avoid adverse environmental effects?
- G. Short-Term Uses
- What are the short term uses versus long-term productivity of the proposed action? Will the proposed actions, in combination with other actions, sacrifice the enhancement of significant long-term productivity as a trade-off for short-term uses?
- H. 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?
- I. Criteria for determining the need for a program EIS:
- (1) A program EIS is required if the EE 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 EE reveals that actions carried out under the program will have both individually and cumulatively significant environmental impacts (40 CFR 1508.7, GM-190, Subpart C, Exhibit, Section 410.30).
  - (3) 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.

#### 410.8 When to Prepare an EA

An EA is to be prepared for:

- (1) Land and water resource projects that are not included in GM-190, Subpart A, Procedures for NRCS-Assisted Programs, Section 410.7 (B)(1) through (4) for which State and local units of government receive Federal technical and financial assistance from NRCS (7 CFR Parts 620-623; and 640 through 643).
- (2) Other actions that the EE reveals may be a major Federal action significantly affecting the quality of the human environment.
- (3) Criteria for determining the need for a program EA:
  - (i) A program EA is to be prepared when NRCS has determined, based on the EE, that a program EIS is not required and the program and actions to implement the program are not categorically excluded.
  - (ii) A program EA may also be prepared to aid in NRCS decision-making and to aid in compliance with NEPA.

(4) 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.

#### 410.9 NEPA and Interagency Planning

##### A. Lead Agency

(1) NRCS is the lead agency for actions under programs it administers. If the actions affect more than one State, the NRCS Chief is to designate one NRCS STC as the RFO. 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 USDA.

(2) 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.

(3) NRCS, as lead agency, is to coordinate the participation of all concerned agencies in developing the EIS according to the CEQ provisions in 40 CFR 1501.6(a) (see [GM-190, Subpart C, Exhibit, Section 410.30](#)).

##### B. Cooperating Agencies

(1) NRCS is to request, as appropriate, the assistance of cooperating agencies in preparing the EE. 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) (see [GM-190, Subpart C, Exhibit, Section 410.30](#)) 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

(1) See [GM-190, Subpart C, Exhibit, Section 410.30](#)

(2) NRCS is to use scoping to identify and categorize significant environment issues in its EE. Formalized scoping is used to ensure 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 an early EE identifies a need for an EIS, NRCS is to publish an 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.

(3) 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.

(4) 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 ([GM-190, Subpart C, Exhibit, Section 410.30](#)) are to be determined. Tiering as defined in 40 CFR 1508.28 ([GM-190, Subpart C, Exhibit, Section 410.30](#)) may be used to define the relation of the proposed statement to other statements.

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

(6) 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) (see [GM-190, Subpart C, Exhibit, Section 410.30](#)). Appropriate, timely requests and notification are to be made to promote public participation in scoping in accordance with paragraph (d) of this section.

(7) The RFO, through the scoping process, will set time and page limits as prescribed in 40 CFR 1501.8 (see [GM-190, Subpart C, Exhibit, Section 410.30](#)). 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 non-Federal 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, and important farmland.

### (3) Project Activities

The following are general considerations for providing opportunities for public participation:

#### 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.

#### Public Notices (40 CFR 1506.6, see [GM-190, Subpart C, Exhibit, Section 410.30](#))

-- 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 clearinghouses pursuant to Executive Order 12372.
- 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.**
- Posted on-site and off-site in the area where the action is to be **located.**

### (4) 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 FR and mailed to national organizations reasonably expected to be interested.

### (5) 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 floodplain 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.

### (6) Documentation

The RFO is to maintain a reviewable record of public participation in the EE process.

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

## **410.10 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 ensure that it meets the requirements of the CEQ regulations and 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, is the subject of a referral under 40 CFR 1504 (see [GM-190, Subpart C, Exhibit, Section 410.30](#)), 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.

## **410.11 Environmental Documents**

A. NRCS is to use the following documents in compliance with NEPA (see Section 410.4 and 410.30 (b)):

- (1) EA
- (2) EIS
- (3) NOIs
- (4) FNSIs
- (5) RODs

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

C. To reduce duplication, NRCS may combine environmental documents with other planning documents of the same proposal, as appropriate. This may necessitate modifying the recommended CEQ format. If documents are combined, the information and sections required by the CEQ regulations must be included in the combined document (40 CFR 1502.10, see [GM-190, Subpart C, Exhibit, Section 410.30](#)). The EIS should indicate those considerations, including factors not related to environmental quality, that are likely to be relevant to a decision.

D. 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 National Technology Center Director is to provide guidance and concurrence on the format and content if the STC 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.

E. In addition to the minimum requirements of the CEQ regulations (40 CFR 1502.10, see [GM-190, Subpart C, Exhibit, Section 410.30](#)), EA's and EIS's are to include:

- (1) A brief description of public participation activities of agencies, groups, and individuals during the EE.
- (2) 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 or other causes.
- (3) Information identifying any approved regional plans for water resource management in the study area (40 CFR 1506.2(d), see [GM-190, Subpart C, Exhibit, Section 410.30](#)), and a statement on whether the proposed project is consistent with such plans.
- (4) All Federal permits, licenses, and other entitlements that must be obtained (40 CFR 1502.25 (b), see [GM-190, Subpart C, Exhibit, Section 410.30](#)).
- (5) A brief description of major environmental problems, conflicts, and disagreements among groups and agencies and how they were resolved. Unresolved conflicts and NRCS's proposal for resolving the disagreements before the project is implemented are to be summarized.

F. Letters of Comment and Responses (40 CFR 1503.4, 1502.9(b), see [GM-190, Subpart C, Exhibit, Section 410.30](#)).

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.

G. 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 upon request. If an appendix is included it is to:

- (i) Meet the requirements of 40 CFR 1502.18 (see [GM-190, Subpart C, Exhibit, Section 410.30](#)).
- (ii) Identify any methodologies used (40 CFR 1502.24, see [GM-190, Subpart C, Exhibit, Section 410.30](#)) and make explicit reference to other sources relied on for conclusions.
- (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, see [GM-190, Subpart C, Exhibit, Section 410.30](#)).

## 410.12 NRCS Decision Making

A. General

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

- (i) Including in all decision 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.
- (ii) Submitting relevant environmental documents, comments, and responses with other decision documents through the review process.
- (iii) Including in the record of formal rule making or adjudicatory proceedings relevant environmental documents, comments, and responses.

(iv) Providing for pre- and post-project monitoring (40 CFR 1505.2(c) and 1505.3, see [GM-190, Subpart C, Exhibit, Section 410.30](#)) and evaluation in representative projects to ensure 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 decision making points and their relation to NEPA compliance are as follows:

##### (i) For Watershed Protection and Flood Prevention projects:

An application for assistance by the sponsoring local organization (SLO) is submitted.

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.

Granting of planning assistance is authorized by the Chief. The RFO must provide an evaluation of the potential environmental impacts to obtain the authorization.

A watershed agreement is developed 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.

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

##### (ii) For RC&D measure plans:

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

A preliminary report is prepared by the RFO to identify goals, alternatives, and effects (including environmental 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.

An authorization for planning assistance is granted by the RFO.

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.

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

#### C. Record of Decision (ROD)

(1) EISs – The RFO is to prepare a concise ROD for actions requiring an EIS. The ROD is to be prepared and signed by the RFO following the 30-day administrative action period initiated by the Environmental Protection Agency's (EPA) publication of the notice of availability of the final EIS in the FR. It is to serve as the public ROD as described in 40 CFR 1505.2 (see [GM-190, Subpart C, Exhibit, Section 410.30](#)) of the CEQ regulations. The ROD is to be distributed to all who provided substantive comments on the draft EIS and others who request it. A notice of availability of the ROD will be published in the FR and local newspaper(s) serving the project area. The RFO may choose to publish the entire ROD.

(2) EAs – 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 an FNSI.

#### D. Distribution and Publication of the FNSI (Section 1506.6(b), see [GM-190, Subpart C, Exhibit, Section 410.30](#)).

(1) If the public has been involved in the development of the project or the EA, then the agency may take administrative action after issuance of the FNSI. In these cases, there is not a formal requirement for there to be a wait period after preparation of the FNSI. However, a 30-day public review period of the EA and FNSI is required in the following situations:

(i) When the proposed action would normally require an EIS.

(ii) When the proposed action is without precedent.

(2) For actions that may be located in or affect a wetland or floodplain and there has been no opportunity for public involvement in the development of the project or EA, the RFO must allow for a period of public review of the EA and FNSI. The length of time for the public review of the EA and FNSI may be determined by the RFO, but the public review timeframe should be no less than 15 calendar days. Thus, a public review timeframe is required in addition to the situations noted above for the following situations:

(i) When the proposed action may involve new construction in a wetland where early public review is not afforded (EO11990).

(ii) When the proposed action is proposed, conducted, supported, or allowed to be located in

a floodplain (EO11988).

(3) If the action is of local concern, then NRCS is to publish the availability of the EA and FNSI in a local newspaper or appropriate media outlet. If the action is of national concern, then NRCS is to publish the availability of the EA and FNSI in the FR.

#### E. Changes in Actions

When it appears that a project or other action needs to be changed, the RFO will perform an EE of the authorized action to determine whether a supplemental NEPA analysis is necessary before making a change.

#### 410.13 Review and Comment

In addition to the requirements of 40 CFR 1503, 1506.1 and 1506.11 (see [GM-190, Subpart C, Exhibit, Section 410.30](#)), NRCS will take the following steps in distributing EIS's for review and comment:

##### (1) Draft EIS's

Five copies of the draft EIS are to be filed by the RFO with the Office of Federal Activities, EPA, Office of Federal Activities, Mail Code- 2252-A, Room 7241, Ariel Rios Building South, 1200 Pennsylvania Ave., NW, Washington DC, 20460. At the same time, the RFO is to send copies of the draft EIS to the following:

##### (2) 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.

##### (3) State and Local Agencies

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.

##### (4) Organizations, Groups, and Individuals

A copy of the draft EIS is to be sent to the appropriate official of each organization or group, each individual of the interested public (GM-190, Subpart A, Procedures for NRCS-Assisted Programs, 410.9(d)(3)(i)), and to others as requested. A charge may be made for multiple copy requests.

##### (5) 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 FR. 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 neither 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.

##### (6) News Release

In addition to the notice of availability published in the FR by EPA, the RFO is to announce the availability of the draft EIS in one or more newspapers serving the area.

##### (7) 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.

##### (8) 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:

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.

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

During the 30-day administrative action period noted in GM-190, Subpart A, Procedures for NRCS-Assisted Programs, Section 410.12(c), NRCS will make its final EIS available to the public (40 CFR 1506.10, see [GM-190, Subpart C, Exhibit, Section 410.30](#)).

##### (9) Supplements to EIS's

(i) 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.

(ii) 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

### 410.20 Reviewing and Commenting on Environmental Impact Statements (EIS') Prepared by Other Agencies

#### A. NRCS Policy

(1) NRCS employees assigned to review and comment on EIS' prepared by other agencies are to be familiar with NRCS policies and guidelines contained in this part and the National Environmental Policy Act.

(2) 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.

(3) The NRCS reviewer should consider the following kinds of concerns when reviewing EIS':

(i) 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?

(ii) 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?

(iii) 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?

(iv) 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?

(v) 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?

(vi) 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?

(vii) 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?

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

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

(4) EIS' referred by USDA to NRCS National Headquarters (NHQ) may designate NRCS as the lead agency for preparing comments. In this case, NHQ determines whether inputs from State Conservationists (STCs), National Technology Support Centers (NTSCs), and other USDA agencies are needed. If so, STCs, NTSCs, and other USDA agencies are requested to forward comments to the National Environmental Coordinator for use in preparing the USDA response.

(5) EISs received by NRCS NHQ are screened 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/she 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 NHQ or NTSC for response preparation. A copy of each response prepared by a STC should be sent to the National Environmental Coordinator.

(6) If a STC receives an EIS from another agency, he/she is to respond to the initiating agency. A copy of his/her comments should be sent to the National Environmental Coordinator.

(7) If an EIS is received by a field or area office of NRCS, the STC will coordinate the response.

(8) NRCS may furnish needed soil, water, and related resource information to the district for their use in preparing comments.

(9) 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 the Council on Environmental Quality.

### 410.21 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 Statement (EIS), and 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 of 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 Headquarters (NHQ)

The Deputy Chief for Science and Technology is responsible for overall coordination with EPA at the NHQ level. The Deputy Chief for Science and Technology is also responsible for contacts with EPA in relation to activities concerning water and related land resource planning and for coordinating work with EPA on EIS development.

##### (2) NRCS State Offices

The State Conservationists (STC) are responsible for contacts and coordination with regional representatives of EPA and State environmental agencies in matters of mutual concern within their respective States.

#### D. Coordination and Implementation

##### (1) NRCS NHQ will:

- (i) Within the framework of USDA agreements and guidelines, develop 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, land inventory, and monitoring activities.
- (iv) Maintain needed liaison and develop mutual guidelines with EPA on water resources work and in coordinating EIS'.
- (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, sediment control, transport of pesticides, organic matter and fertilizers, and burning of residues or clearing debris.

##### (2) The STCs 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 preparation of NRCS practice standards and procedures for agricultural pollution abatement within the State and across State boundaries with EPA and related State agencies as needed.
- (iii) Encourage the development of a coordinated review and approval process within and among States 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.

### **410.22 Endangered and Threatened Species and Species of Concern**

#### A. General

Throughout this document, any references to States include the Pacific Islands and Caribbean Areas, and any terms such as "species of concern" also pertain to the Pacific Islands and Caribbean Areas. Any references to State Conservationists include the Directors of the Pacific Islands and Caribbean Areas. Guidance for procedures is found in the National Resources Conservation Service (NRCS) National Environmental Compliance Handbook (NECH).

#### B. Purpose

This policy prescribes the requirements for providing NRCS technical assistance to clients, implementing NRCS actions, and meeting NRCS' responsibilities for the conservation of species identified by Federal, State, and Tribal entities.

#### C. Authorities

##### (1) Endangered Species Act (ESA) of 1973, 16 U.S.C. 1531 et seq.

NRCS, as an agency within the U.S. Department of Agriculture (USDA), has both the authority and the obligation under ESA to protect and conserve plant and animal species listed or proposed for listing as endangered or threatened, as well as those habitats determined critical by the Department of the Interior's (DOI) Fish and Wildlife Service (FWS) or the Department of Commerce's (DOC) National Marine Fisheries Service (NMFS), hereafter referred to as "the Services."

- (2) DOI and DOC regulations at 50 C.F.R. Section 402 Joint Counterpart Endangered Species Act Section 7 Consultation Regulations.
- (3) NRCS regulations at 7 C.F.R. Section 650.22(b) require that the NRCS concern for species and habitats will not be limited to those federally listed or proposed under ESA, but will include those designated by State agencies and tribal governments as endangered, threatened, or species of concern.
- (4) FWS Safe Harbor Agreements and Candidate Conservation Agreements with Assurances at 50 C.F.R. Sections 17.22 and 17.32.

#### D. Definitions

- (1) **Actions** – All activities or programs authorized, funded, or carried out in whole or in part by NRCS in the United States.
- (2) **Action Area** – All areas to be affected directly or indirectly by the proposed action and not merely the immediate area involved in the action (50 C.F.R. Section 402.02).
- (3) **Biological Assessment** – Information prepared by or under the direction of NRCS concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area, and the evaluation of potential effects of the action on such species and habitat. A biological assessment may be a document prepared for the sole purpose of interagency consultation, or it may be a document or documents prepared for other purposes (e.g., an environmental assessment or environmental impact statement) containing the information required to initiate consultation. NRCS is required to provide the Services a specific guide or statement as to the location of the relevant consultation information, as described in 50 C.F.R. Section 402.14, in any alternative document submitted in lieu of a biological assessment.
- (4) **Biological Opinion** – States the opinion of the Services as to whether an NRCS action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. It also includes a summary of the information on which the opinion is based and a detailed discussion of the effects on the action on listed species or designated critical habitat.
- (5) **Candidate Conservation Agreements with Assurances (CCAA)** – Agreements between private landowners, State agencies, Tribal governments, or other eligible entities and the Services to conserve species before they become listed and, if they should become listed, to protect the party in the agreement from restrictions in excess of those already identified within the CCAA.
- (6) **Candidate Species** – Any species which, in the opinion of the Services, may qualify for listing as either endangered or threatened under ESA. Candidate species may be “proposed” for future listing but are not officially “proposed species” (see definition #26 below).
- (7) **Conference** – Informal discussions between NRCS and the Service under Section 7(a)(4) of ESA regarding the impact of an NRCS action on a proposed species or critical habitat and results in advisory recommendations, if any, to minimize or avoid adverse effects. If requested by NRCS and deemed appropriate by the Services, the conference may be conducted in accordance with procedures for formal consultation.
- (8) **Conservation of Species** – the use of all methods and procedures, including technical assistance and NRCS actions, to promote the recovery of all species covered by this policy.
- (9) **Critical Habitat** – All areas designated by the Services as essential to the conservation of a federally listed or proposed species.
- (10) **Effects** – The direct and indirect effects of an action on the species or habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline.
  - (i) The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early Section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process.
  - (ii) Direct effects are the immediate effects of the action and are not dependent on the occurrence of any additional intervening actions for the impacts to species or critical habitat to occur.
  - (iii) Indirect effects are those for which the proposed action is an essential cause, and that are later in time, but still are reasonably certain to occur. If an effect will occur whether or not the action takes place, the action is not an essential cause of the indirect effect. Reasonably certain to occur is the standard used to determine the requisite confidence that an effect will happen. A conclusion that an effect is reasonably certain to occur must be based on clear and substantial information.
  - (iv) Interrelated actions are those that are part of a larger action and depend on the larger action for their justification.
  - (v) Interdependent actions are those that have no independent utility apart from the action under consideration.
- (11) **Endangered Species** – Any species designated as being in danger of extinction throughout all or a significant portion of its range.
- (12) **Formal Consultation** – A process between the Services and NRCS that:
  - (i) Determines whether a proposed NRCS action is likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat.
  - (ii) Begins with NRCS’ written request and submittal of a complete initiation package,

- including a biological assessment.
- (iii) Concludes with the issuance of a biological opinion and incidental take statement by either or both of the Services. If a proposed NRCS action may adversely affect a listed species or designated critical habitat, formal consultation is required.
- (13) **Habitat Conservation Plan** – As defined by the Services, a planning document that is a mandatory component for an incidental take permit application under Section 10(a)(2) of ESA.
- (14) **Harass** – As defined by the Services, actions that create the likelihood of injury to a listed species to such an extent as to significantly disrupt normal behavior patterns that include, but are not limited to, breeding, feeding, or sheltering.
- (15) **Harm** – As defined by the Services, significant habitat modification or degradation that results in death or injury to a listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering.
- (16) **Incidental Take** – Takings (see definition #30) that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by NRCS or the applicant. Incidental take is provided by the Services through an incidental take statement or permit respectively for listed fish and wildlife species.
- (17) **Informal Consultation** – A process, that may be implemented prior to formal consultation, that includes all discussions and correspondence between the Services and NRCS or designated non-Federal representative to determine whether a proposed Federal action may affect federally listed species or designated critical habitats.
- (18) **“Jeopardize the Continued Existence of”** – To engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a federally listed species in the wild by reducing the reproduction, numbers, or distribution of the species.
- (19) **“Likely to Adversely Affect” (LAA)** – The determination in a biological assessment (or conclusion during informal consultation) if any (including short-term) adverse effect to federally listed species may occur as a direct or indirect result of the proposed action and the effect is not discountable, insignificant, or beneficial. This determination requires the initiation of formal consultation.
- (20) **Listed Species** – Any animal or plant that has been designated as endangered or threatened under Section 4 of ESA.
- (21) **“May Affect”** – The determination that a proposed NRCS action may result in impacts to a listed, proposed, or candidate species or designated or proposed critical habitat.
- (22) **“No Effect”** – The conclusion when NRCS determines a proposed action will not have any measurable affect (either beneficial or adverse) on species and habitats covered by this policy.
- (23) **“Not Likely to Adversely Affect” (NLAA)** – The appropriate conclusion when effects on federally listed species are expected to be discountable, insignificant, or completely beneficial. **Beneficial effects provide positive effects without any adverse effects to the species.** Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. **Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not be able to meaningfully measure, detect, or evaluate insignificant effects, or expect discountable effects to occur.**
- (24) **NRCS Action** – Activities in which NRCS exercises (or fails to exercise) control, responsibility, or jurisdictional authority. **NRCS action most commonly occurs in the form of Federal financial assistance, but includes other instances where NRCS control or responsibility is exercised (such as approving compatible uses or subordinating NRCS easement rights).**
- (25) **Proposed Critical Habitat** – Habitat proposed in the Federal Register to be designated as critical habitat, or habitat proposed to be added to an existing critical habitat designation, under Section 4 of ESA for any listed or proposed species.
- (26) **Proposed Species** – Any species of fish, wildlife, or plant that is proposed in the Federal Register to be listed as endangered or threatened under Section 4 of ESA.
- (27) **Safe Harbor Agreement** – A voluntary agreement between one of the Services and a landowner to restore, enhance, or maintain habitats for federally listed species, with assurances that no additional restrictions above those applicable at the time of enrollment in the program will be imposed as a result of the voluntary actions in the original agreement.
- (28) **Service** – DOI’s FWS, or DOC’s NMFS.
- (29) **Species** – Any member of a taxonomic class of the plant or animal kingdoms, or any subspecies thereof, that interbreeds when mature.
- (30) **Species of concern** – any species protected by law or regulation by a State or Tribe as endangered, threatened, rare, declining, sensitive, or otherwise at risk.
- (31) **Take** – As defined by ESA means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

The ESA “take” prohibition in Section 9(a)(1) applies to listed species of fish and wildlife. Section 9(a)(2) applies to plants and prohibits:

Removing, reducing to possession, maliciously damaging, or destroying listed plant species on areas under Federal jurisdiction.

Removing, cutting, digging up, damaging, or destroying listed plant species on any area in knowing violation of any law or regulation of any State, or in the course of any violation of a State criminal trespass law.

- (32) **Threatened species** – any species identified as likely to become an endangered species

within the foreseeable future throughout all or a significant portion of its range.

#### E. NRCS Policy

(1) NRCS is committed to supporting its clients and partners by providing technical assistance and NRCS actions to conserve and improve natural resources on private lands. Within this framework, and consistent with legal requirements, the implementation of conservation programs through planning and application of conservation practices and measures shall provide for the conservation of:

- (i) Federally listed species (endangered and threatened).
- (ii) Species proposed for Federal listing.
- (iii) Federal candidate species.
- (iv) Federally designated and proposed critical habitat.
- (v) State and Tribal species of concern and their habitats.

(2) NRCS is to conduct an Environmental Evaluation (EE) for all assistance to determine the effects of proposed actions and alternatives on federally listed species, species proposed for listing, and candidate species; federally designated and proposed critical habitat; and relevant State and Tribal species of concern and their habitats. Documentation is to include the nature and extent of the effects, and conclude whether the proposed action and alternatives will have "no effect" or "may affect" species and their habitats. In determining the effects, NRCS shall use the best scientific and commercial data available.

(3) When NRCS concludes that a proposed action will have "no effect" on species and habitats covered under this policy, NRCS shall provide documentation supporting the determination and may proceed with planning and application of the proposed action.

(4) Prior to any required consultation, conference, or other contact with entities outside of NRCS that may identify information about an NRCS client or landowner, NRCS must obtain written consent from the client and the landowner to release personally identifiable information. If consent is not given, NRCS shall not pursue outside contact and must cease to provide assistance for the action or portion of the action affecting the species or their habitat. NRCS may contact outside entities to gather information, such as species life history or habitat requirements that do not reveal the location of the action, client, or landowner identity.

#### (5) Federally Listed Species and Designated Critical Habitat

(i) NRCS Technical Assistance Only. When NRCS concludes that a proposed action "may affect" federally listed species or designated critical habitat, NRCS will recommend alternative conservation treatments that will avoid adverse effects and, to the extent practicable, provide long-term benefit to species. Should the recipient of technical assistance choose an alternative that results in adverse effects, NRCS shall terminate assistance for the action or portion of the action affecting federally listed fish, wildlife, or plant species and/or their habitats. For federally listed plant species, NRCS will inform the client and landowner of the NRCS policy and shall terminate assistance. For federally listed fish and wildlife species, NRCS will inform the individual of ESA implications and their responsibilities under Section 10 of ESA and the possible need to obtain a Habitat Conservation Plan and incidental take permit. NRCS may proceed with the technical assistance if the client/landowner obtains a permit to lawfully implement actions under Section 10 of ESA. A copy of the permit shall be included in the NRCS case file. When it is anticipated that technical assistance will result in NRCS action, NRCS may follow requirements in section (e) 5(ii) below.

(ii) NRCS Actions. When NRCS concludes that an action under NRCS control "may affect" federally listed species or designated critical habitat, NRCS shall consult with the appropriate Service. NRCS action will only be provided if one of the following three situations occurs:

NRCS receives concurrence from the Services that the proposed action is not likely to adversely affect any listed species or critical habitat.

The client and the landowner comply with all agreed-to items of a biological opinion.

The client and the landowner obtain a Section 10 ESA permit, and NRCS obtains written concurrence from the Service(s) that no further consultation is required. A copy of the permit shall be included in the NRCS case file.

-- NRCS shall incorporate the reasonable and prudent measures, terms and conditions of the biological opinion and/or permit into NRCS conservation plans and contracts. Conservation recommendations identified in the biological opinion shall be incorporated to the maximum extent practicable.

#### (iii) Informal and Formal Consultation

Informal consultation with the Services may be initiated when NRCS cannot determine whether a proposed action will have "no effect" or when a "may affect" determination is made. If the impacts are determined "no effect," informal consultation with the Services is not required, and NRCS may proceed with the proposed action.

If NRCS concludes that the NRCS action "may affect," but is not likely to adversely affect (NLAA) a listed species or adversely modify designated critical habitat, NRCS shall initiate informal consultation and seek written concurrence from the Services. If the Services provide written concurrence, the consultation provision is satisfied (50 C.F.R. Section 402.13). A copy of the concurrence letter shall be included in the NRCS case file.

NRCS may forgo informal consultation in lieu of formal consultation at any time.

-- Formal consultation is required when:

The Services provide written documentation stating that they do not concur with NRCS' NLAA determination.

NRCS determines that the proposed action "may effect" and is "likely to adversely affect" (LAA) listed species or adversely modify designated critical habitat.

-- State Conservationists have the option to forgo informal or formal consultations or conferencing and decline to pursue a proposed action if the resources are not available to enter into consultation. If NRCS decides not to consult or conference with the Services, NRCS will inform the landowner and client of their responsibilities under Section 10 of ESA.

**(6) Federally Proposed Species and Proposed Critical Habitat**

(i) **NRCS Technical Assistance Only** – When NRCS concludes that a proposed action "may adversely affect" species proposed for listing or habitat proposed to be designated as critical, NRCS will recommend alternative conservation treatments that will avoid adverse effects, and to the extent practicable, provide long-term benefits to species and habitat. Should the client or landowner refuse to apply the recommended alternative conservation treatment, NRCS will inform the client and landowner of the NRCS policy and shall terminate assistance for the action or portion of the action affecting the proposed species. When it is anticipated that technical assistance will result in NRCS action, NRCS shall initiate a conference with the appropriate Service.

(ii) **NRCS Action** – When NRCS concludes that a proposed action "may adversely affect" species proposed for listing or habitat proposed to be designated as critical, NRCS shall conference with the appropriate Service to determine whether the action is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of the proposed critical habitat.

NRCS shall incorporate all recommendations of the conference into plans and specifications to the extent practicable. If the species is federally listed or has federally designated critical habitat prior to the completion of the action, the project will be halted while the necessary consultation requirements are met.

**(7) Federal Candidate, State, and Tribal Designated Species of Concern.**

(i) **NRCS shall use its authorities and programs to provide for the conservation of Federal candidate and State and Tribal species of concern.**

NRCS shall contact the Services, State agencies, and Tribal governments to identify Federal candidate, State and Tribal designated species of concern, and NRCS actions which have the greatest potential to affect those species and their habitats.

**(ii) Federal Candidate Species**

NRCS Technical Assistance or NRCS Action – When NRCS concludes that a proposed action "may adversely affect" Federal candidate species, NRCS will recommend only alternative conservation treatments that will avoid or minimize adverse effects, and to the extent practicable, provide long-term benefit to the species. If the species becomes federally listed, proposed for listing, or the critical habitat is federally designated or proposed prior to the completion of the action, the project will be halted while the necessary consultation or conferencing requirements are met.

**(iii) State and Tribal Designated Species of Concern**

NRCS shall fully incorporate the species protection requirements identified during State and Tribal coordination into NRCS conservation plans and contracts when required by State law or regulation. NRCS shall ensure that NRCS funded or controlled actions do not violate State or Tribal law or regulations.

Discretionary conservation recommendations from States and Tribes shall be incorporated to the maximum extent practicable.

NRCS technical assistance only – When NRCS concludes that a proposed action "may adversely affect" State or Tribal designated species of concern, NRCS will recommend only alternative conservation treatments that will avoid or minimize adverse effects to the extent practicable. Should the client or landowner refuse to apply the recommended alternative conservation treatment, NRCS will inform the client and landowner of the NRCS policy and shall terminate assistance for the action or portion of the action affecting the species of concern.

NRCS Action – When NRCS has authority controlling the implementation of actions which may affect State or Tribal designated species of concern, NRCS shall coordinate with the appropriate State or Tribal government and receive concurrence on recommended alternatives when required by State law or regulation. Any needed permits shall be obtained by the landowner or their designee. Should the client or landowner refuse to apply the recommended alternatives, NRCS will inform the client and landowner of the NRCS policy and shall terminate assistance for the action or portion of the action affecting species of concern.

**(8) Streamlining Interagency Consultation**

NRCS shall, at all organizational levels, explore opportunities to improve efficiencies through programmatic agreements, interagency training, and other streamlining methods to implement NRCS actions in a more efficient and timely manner.

**(9) Technical Service Providers (TSP)**

TSPs, certified as conservation planners that develop conservation plans to be implemented fully

or in part with NRCS funds, shall provide NRCS with the information necessary to assess whether **Federal, State, or Tribal permits or consultation/conferencing with the Services are required. This information will be documented according to NRCS State-specific procedures. In this context, TSPs do not represent NRCS and may not conduct required consultations, conferences, or other communication with entities outside of NRCS.**

**(10) Non-Federal Representatives**

Non-Federal representatives may be involved in informal consultation or conference processes and may request and receive species lists, prepare biological assessments, and provide information to the Services for formal consultations and/or conferences. However, the Services require NRCS to designate formally the **non-Federal representative in writing. NRCS has the ultimate responsibility for Section 7 ESA obligations.**

**(11) Partners**

Partners (both Federal and non-Federal) may assist NRCS on consultations and/or conferences with the Services.

Non-Federal partners can request and receive species lists and prepare biological assessments, but cannot conduct Section 7 ESA consultation and/or conferences for NRCS. NRCS must review and approve any document prepared by a third party before submitting it to the Services.

Federal partners (e.g., FWS Partners for Fish and Wildlife Program) or Tribal governments can request and receive species lists and prepare biological assessments for a project where NRCS funds are involved. The Federal partner may also consult or conference for NRCS as long as NRCS has reviewed and approved the effects assessment. NRCS shall receive a copy of the correspondence and, in the case of a biological opinion, will be bound by all reasonable and prudent measures, and terms and conditions contained.

**F. Responsibilities for Policy Implementation**

**(1) Deputy Chief for Programs:**

- (i) Oversees, in consultation with the Chief as necessary, the development of programs which, to the extent practicable, contribute to the conservation of endangered, threatened, proposed, and candidate species, and species of concern.
- (ii) Reviews existing NRCS programs to fulfill ESA Section 7(a)(1) responsibilities to conserve endangered and threatened species.

**(2) Deputy Chief for Science and Technology:**

- (i) Oversees, in consultation with the Chief as necessary, the development of policies and guidance:
  - That will contribute to the conservation of endangered, threatened, proposed, and candidate species, and species of concern.
  - Avoids actions that are likely to jeopardize the continued existence of federally listed proposed and candidate species, or result in the destruction or adverse modification of federally designated or proposed critical habitat.
- (ii) Oversees the coordination of Agency activities with the Services, Tribes, and other concerned Federal agencies regarding policy implementation.

**(3) Director, Ecological Sciences Division:**

- (i) Develops policies and directives for guiding Agency efforts within the framework of Federal legislation, USDA agreements, and NRCS objectives that:
  - Contribute to the protection and conservation of species and habitats covered by this policy.
  - Avoid actions that are likely to adversely affect species and habitats covered by this policy.
- (ii) Assists with, in coordination with other appropriate Division directors and the Services, the development of programmatic consultations and programmatic conferences for USDA conservation programs.
- (iii) Coordinates national activities with the Services, Tribes, and other concerned Federal agencies.
- (iv) Establishes, maintains, and updates procedures for internal periodic review of NRCS participation in the national effort to conserve endangered, threatened, proposed, and candidate species and species of concern.
- (v) Establishes and maintains a process for sharing technical information with Federal, State, and Tribal governments to provide for the development of technology and conservation practices that avoids harm to species and habitats covered under this policy, and furthers their conservation.

**(4) Regional Conservationist:**

- (i) Oversees the coordination of activities with the Services, Tribes, and other concerned Federal agencies regarding policy implementation in their administrative area.
- (ii) Actively supports implementation of NRCS policy relative to endangered, threatened, proposed, and candidate species, species of concern and their habitats.

**(5) National Technology Support Centers:**

- (i) Assists Director of Ecological Sciences in development of policy and guidance.

- (ii) Provides direct technical assistance, training, and guidance to States.
  - (iii) Assists States with interpretation of policy.
  - (iv) Facilitates the development of programmatic biological assessments, consultations, and conferences.
  - (v) Develops tools and other instruments to streamline compliance.
  - (vi) Coordinates interstate consultation and conferencing efforts.
- (6) State Conservationists:
- (i) Coordinates, consults, or conferences with the Services when appropriate to ensure:
    - NRCS utilizes its authorities to further the conservation of federally listed species as required by Section 7(a)(1) of ESA and, in so doing, develop procedures to establish **working relationships with other concerned Federal agencies**. State Conservationists shall develop and maintain an administrative record documenting the relevant NRCS activities conducted in meeting the Agency's Section 7(a)(1) responsibilities.
    - NRCS activities will not jeopardize the continued existence of or destroy or adversely modify designated or proposed critical habitat for listed or proposed species (i.e., Section 7(a)(2) and 7(a)(4) of ESA, respectively). Further, NRCS will consider effects of NRCS activities on Federal candidate species. Consultation is required under ESA when NRCS determines that implementation of a conservation practice (or a system of practices) or measures for which NRCS action has been provided, "may affect" (beneficially or adversely) **a listed species or designated critical habitat**. Conferencing is required when the proposed action is likely to jeopardize the continued existence of a proposed species or destroy or **adversely modify proposed critical habitat**. The Services may assist NRCS in determining effects, and may advise on ways to avoid or minimize adverse effects to proposed species or proposed critical habitats.
    - NRCS maintains an accounting on a species-by-species basis of all fiscal year expenditures made primarily for the conservation of federally listed species as called for under Section 18 of ESA, and provides this summary to the Deputy Chief for Science and Technology on an annual basis.
  - (ii) Relevant comments to Federal Register notices regarding ESA are provided, and that copies of comments are provided to the Director, Ecological Sciences Division. When providing comments to a Federal Register notice, NRCS cannot disclose information obtained pursuant to providing conservation assistance protected under the Privacy Act or 16 U.S.C. 3844(b).
  - (iii) Informal and Formal Consultations and/or Conferences:
    - Identify and delegate all field and State office staff responsibilities regarding informal and formal consultations and/or conferences with the Services.
    - Establish protocols for District Conservationists to notify designated State office staff when consultations or conferences are being considered or have been requested by landowners.
    - Determine whether a NRCS State office has the resources to engage in informal and formal consultations and/or conferences.
    - Ensure training is provided to appropriate staff, including an awareness of Safe Harbor Agreements and CCAAs.
  - (iv) As resources allow, encourages NRCS participation during development of ESA Recovery Plans.
  - (v) Contacts the Services, State agencies, and Tribal governments to identify Federal candidate species, species of concern, and NRCS actions which have the greatest potential to affect those species and their habitats.
  - (vi) Works with the appropriate regulatory entities to establish streamlined regulatory processes and minimizes the need for site-specific consultations.
  - (vii) Ensures training is provided to appropriate staff regarding State and Tribal laws or regulations regarding species of concern.
    - Ensures that NRCS field level activities support the conservation and protection of species of concern identified by State or Tribal law or regulations and, if the species of concern are also federally listed, then there is coordination between State agencies, Tribal governments, the Services, and NRCS for consistent NRCS assistance and effects determinations.
  - (viii) Requires NRCS staff to examine NRCS programs and operations and make recommendations to the State Conservationist, or designated representative, of any needed modifications to further the conservation of species and habitats covered by this policy.
  - (ix) Provides technical tools to field employees to carry out this policy in an effective and timely manner.
  - (x) Ensures that NRCS personnel will not disclose, without landowner consent, any information protected by the Privacy Act or 16 U.S.C. 3844(b).
- (7) NRCS District Conservationists:
- (i) Shall be aware of species and habitats covered by this policy, whose geographic ranges include all or part of their responsibility.
  - (ii) Examine local NRCS operations and make recommendations to the State Conservationist, or designated representative, of any needed modifications to species and habitats covered by this policy.
  - (iii) Shall evaluate and document the impacts (both beneficial and adverse) that assistance to

landowners, relative to the planning and application of conservation practices, may have on species and habitats covered by this policy.

(iv) Shall follow State office protocols regarding consultation, conferencing, or conferring with the Services and State, and/or Tribal governments, as needed.

(v) Shall document and report to the State Conservationist through established protocols any conditions, actions, or trends that may adversely impact endangered and threatened species, species of concern, and their habitats.

(vi) Within the conservation planning process, shall provide complete information to landowners to make them aware of the existence of species and habitats covered by this policy, the potential beneficial or adverse effects of conservation practices or measures on these species, and alternatives to avoid adverse effects.

## 410.23 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 government, 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 Headquarters

(i) The Chief will designate a member of the National Headquarters 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.

(ii) Reserved

(2) NRCS State Offices

The State Conservationists (STC's) 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 area concepts and programs and to participate in them.

(2) NRCS employees will report to STC's 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:

- (i) *Soil Taxonomy, A Basic System of Soil Classification for Making and Interpreting Soil Surveys*, USDA-NRCS Agricultural Handbook 436.
  - (ii) *Forest Cover Types of North America Exclusive of Mexico*, Report of the Committee on Forest Cover Types, Society of American Foresters, 1964.
  - (iii) *Potential Natural Vegetation of Conterminous United States*, A. W. Kuchler, American Geographical Society Special Publication 36, 1964.
  - (iv) Wetlands classification described by the U.S. Fish and Wildlife Service in its Circular 39.
- (6) NRCS will, to the extent feasible, use these classification systems when providing technical assistance on public and private natural areas and ecological preserves.
- (7) The NRCS published National List of Scientific Plant Names will be used when scientific names or name symbols are needed for automatic data processing.

#### 410.24 Scenic Beauty (Landscape Resources)

##### 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, 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.

##### B. Policy

NRCS will:

- (i) Provide technical assistance with full consideration of alternative management and development systems that preserve scenic beauty or improve the landscape.
- (ii) Emphasize the application of conservation practices having scenic beauty or landscape resource values, particularly in waste management systems, field borders, field windbreaks, wildlife and wetland habitat 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 linking beauty with utility.
- (iii) Promote personal pride in landowners in the installation, maintenance, and appearance of conservation practices and their properties.
- (iv) Select suitable areas for waste products and use of screens to hide "eyesore" areas.
- (v) Encourage conservation districts to include practices which promote scenic beauty in their annual and long-range programs.

##### C. Responsibility

NRCS will provide technical assistance through conservation districts to landowners, operators, communities, and State and local governments in developing programs relating to scenic beauty.

##### D. NRCS National Headquarters (NHQ)

The Chief will:

- (i) Assign appropriate NRCS NHQ leadership to ensure that enhancement of scenic beauty is included in national information, policy, guidelines, standards, and guides to specifications for conservation practices without impairing basic soil and water conservation functions.
- (ii) Emphasize in plant material center management and in plant material functions that locating and evaluating plants for forage, erosion control, and recreation or wildlife uses be carried out with full attention to landscape resource value.

##### E. Reserved

##### F. NRCS State Offices

The State Conservationists (STC) will:

- (i) Assign appropriate staff member(s) to provide leadership in carrying out scenic beauty policy and procedures 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 landscape resource in the NRCS information program whenever opportunities exist.

##### G. 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 applicable

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 landscape.

(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.

#### 410.25 Flood Plain Management

##### A. Background

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 floodwater 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.

##### B. Policy

NRCS provides leadership and takes action, where practicable, to conserve, preserve, and restore existing natural and beneficial values in base flood plains (areas with a 1 percent chance of being flooded in any given year, also referred to as the 1 percent exceedance probability or the 100-year return interval) as part of technical and financial assistance in the programs it administers. In addition, those flood plains with a 0.2 percent chance of flooding (or 500-year return interval) 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.

##### C. 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 floodplain management in NRCS-assisted programs. The general procedures and guidelines in this part comply with Executive Order (E.O.) 11988, Flood plain Management, dated May 24, 1977.

##### D. Compatible Land Uses

The NRCS Chief 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.
- (ii) Agricultural production in accordance with official state or designated area water quality plans.

##### E. Non-project Technical and Financial Assistance Programs

The NRCS Chief 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.

##### F. 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 (EE) required for each project action (Section 410.5 of this part) will include alternatives to avoid adverse effects and incompatible development in base flood plains. Public participation in planning is described in Section 410.9 of this part, and will comply with Section 2(a)(4) of E.O. 11988. Flood-plain management requires the integration of these concerns into NRCS's-NEPA process for project assistance programs as described in Section 410.12 of this part.

##### G. Real Property and Facilities Under NRCS Ownership or Control

NRCS owns or controls 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-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 EE 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)/Federal Emergency Management Agency (FEMA) flood insurance maps, other available maps and information, or an on-site 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 Section 410.9 of this part.

#### H. 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 on-site with the land user by NRCS.**

##### (i) NRCS National Headquarters

(7 CFR 600.2). The NRCS Chief, State Conservationists (STCs), 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 Chief. The Deputy Chief for Financial Assistance and Planning Division (FAPD) has program authority to oversee the application of policy in NRCS programs.**

##### (ii) NRCS State Offices

(7 CFR 600.4). Each STC is the RFO 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 STC 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 STC 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 STC 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 floodplain management into project planning and consultations on land use decisions by land users and project sponsors.

##### (iii) NRCS Field Office

The district conservationist (7 CFR 600.6) 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.**

#### I. Coordination and Implementation

All planning by NRCS staffs is interdisciplinary and encompasses the six NEPA policy statements, the WRC Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, and an equivalent of the eight-step decision making process in the Water Resources Council's February 1978 Flood Plain Management Guidelines. NRCS internal handbooks, manuals, and memoranda provide detailed information and guidance for NRCS planning and environmental evaluation.

#### J. Steps for Non-project Technical and Financial Assistance Programs

- (1) NRCS assistance programs are voluntary and are carried out through local conservation districts (State entities) primarily on non-Federal, privately owned lands.
- (2) 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/FEMA flood insurance maps, and other available maps and information, or by making an on-site determination of the approximate level of the base flood, if maps or other usable information are lacking.
- (3) 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.
- (4) 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.

(5) 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.

#### K. Steps for Project Assistance Programs

(1) 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.

(2) NRCS uses an interdisciplinary EE (Section 410.5 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/FEMS 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 1 percent and 0.2 percent probability (100- and 500-year) flood plain maps where there are none.

(3) NRCS'-NEPA process (Part 410) 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.

(4) 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 floodplain management would likely result in adverse effects or incompatible development, and the EE reveals that there are practicable alternatives to the proposed project that would not cause adverse effects on the base flood plain.

(5) In carrying out the planning and installation of land and water resource conservation projects, NRCS will avoid, to the extent possible, the long- 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.

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

#### L. 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 flood proofing and other flood protection measures, as appropriate.

### 410.26 Protection of Wetlands

#### A. Background

(1) NEPA requires Federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of proposed actions and alternatives to those actions. NEPA specifically identifies wetlands as a required consideration in determining the significance of impacts (40 Code of Federal Regulations (C.F.R.) Section 1508.27(b)(3)), and the Natural Resources Conservation Service (NRCS) describes wetlands as a critical environmental concern in the agency's rule for the implementation of NEPA (7 C.F.R. 650).

(2) Executive Order (EO) 11990, signed by former President James Carter on May 24, 1977, requires that each agency take action to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the beneficial functions of wetlands when "providing federally undertaken, financed or assisted construction and improvements." EO 11990 applies to NRCS financial and technical assistance activities. NRCS assesses and evaluates environmental impacts to natural and artificial wetlands resulting from NRCS assistance, and documents this assessment and evaluation on the Environmental Evaluation (EE) Worksheet form CPA-52. This policy implements NRCS responsibilities under EO 11990 and for compliance with the agency's regulation implementing NEPA (7 C.F.R. 650).

(3) NRCS is required to consider impacts to wetlands through other Federal laws including, but

not limited to, the Clean Water Act, the Wetland Conservation provisions of the Food Security Act of 1985, and State, Tribal, and local laws which may also provide protection to wetlands. These other Federal, State, and local laws which may provide wetland protection measures could require NRCS to take actions in addition to actions required under this policy.

## B. Purpose

The following policy provides procedures by which NRCS will consider impacts to wetlands when an action is proposed, undertaken by, or assisted by NRCS. Applicability:

- (i) This policy applies to NRCS technical and financial assistance for activities with the potential to impact wetlands, whether or not those wetlands are natural or artificial.
- (ii) This policy does not apply to assistance provided for emergency work performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146), which is essential to save lives and protect property, public health, and safety.
- (iii) This policy applies to NRCS actions in addition to Wetland Conservation (WC) provisions of the Food Security Act of 1985. It includes areas that may be exempt under the WC provisions but that meet wetland criteria. The WC provisions of the Food Security Act of 1985 limit actions in wetlands by USDA program participants, not NRCS. It is important for NRCS staff to understand that the WC provision affords exemptions (e.g., artificial wetlands, prior-converted croplands, and Converted Wetland Third Party) to USDA program participants not afforded to NRCS when taking a Federal action. For example, all actions taken by a program participant are exempt on wetlands that qualify for the Prior Converted Cropland (PC) exemption, but wetland PC's are not exempt from this policy.

## C. Definition of Terms

In this document, the terms associated with the mitigation process are as follows:

- (i) **Avoidance** – Selection of a practicable alternative that does not cause adverse impacts to any portion of the wetland.
- (ii) **Compensation** – Replacement of wetland functions lost as a result of unavoidable wetland impacts. Compensation is required for unavoidable impacts to wetland functions that result from the proposed activity after avoidance and minimization have been considered and found not to be practicable. Compensation includes restoration, enhancement, creation, and preservation.
- (iii) **Creation** – The establishment of a wetland on a site location that was historically non-wetland.
- (iv) **Enhancement**– The augmentation of wetland functions beyond the original natural conditions on a former, degraded, or naturally functioning wetland site; sometimes at the expense of other functions.
- (v) **Minimization** – Measures that will reduce negative effects on the functions of an existing wetland, or the modification of the proposed activity to limit the area of wetland affected.
- (vi) **Mitigation** – Mitigation includes: avoidance by not performing a certain action or parts of an action; minimization by limiting the degree or magnitude of the action; restoration, enhancement, or creation by rectifying the impact to the area of wetland affected; preservation by reducing or eliminating the impact over time during the life of the action; and compensation by replacing or providing substitute resources or environments.
- (vii) **Practicable Alternative** – An alternative that is available and capable of being done after considering costs, existing technology, and logistics in light of overall project purposes. The alternatives analysis considers the following factors:
  - Environmental – Fish and wildlife habitat, endangered and threatened plant and animal species, soil erosion, water quality and quantity, air quality, flooding, groundwater recharge, nutrient cycling, and recreation.
  - Economics – Cost effectiveness, including changes in the cost of farm operation due to labor, equipment, timeliness, and convenience. An alternative that costs more than another alternative may still be cost effective when considered in the context of overall project costs and benefits.
- (viii) **Resource Suitability** – Ability of soil, water, and related resources to support the intended use.
- (ix) **Technology** – Availability of technology to accomplish the objectives of the activity.
- (x) **Preservation** – Removing a threat to or preventing the decline of wetland functions by an action in or near an existing wetland. Preservation does not result in a gain of wetland functions and will be used only in exceptional circumstances.
- (xi) **Restoration** – The return of a wetland and its functions to a close approximation of its original condition as it existed prior to disturbance on a former or degraded wetland site.

## D. General

- (1) NRCS recognizes the vital functions that wetlands provide and, while working with clients to maintain viable enterprises, strives to assist clients with the protection of wetland functions in the delivery of technical and financial assistance. NRCS considers restoration, enhancement, creation, and preservation of wetlands in natural resource conservation planning.
- (2) When providing assistance, NRCS completes an EE considering the objectives of the client in

the context of environmental, economic, and other pertinent effects.

#### E. Identifying Wetlands Subject to This Policy

(1) EO 11990 defines wetlands as those areas that are inundated by surface or ground water with a frequency sufficient to support and, under normal circumstances, does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

(2) Wetlands will be identified using NRCS-approved methods commensurate with the scope and intensity of proposed actions. An area is a wetland if it has hydric soil, hydrophytic vegetation, and indicators of wetland hydrology. A wetland may be subject to this policy, even if it is not subject to the WC provisions or Section 404 of the Clean Water Act (e.g., PC wetlands that meet wetland criteria, as described above). NRCS - approved methods include:

- (i) Wetlands of the United States; (Circular 39).
- (ii) Classification of Wetlands and Deepwater Habitats in the United States; (Cowardin).
- (iii) U.S. Army Corps of Engineers Wetland Delineation Manual (1987 Manual, as revised and supplemented).
- (iv) Food Security Act Wetland Identification Procedures.

(3) **Artificial Wetlands** – Although not subject to the WC provisions, artificial wetlands may provide important functions that should be assessed and evaluated in the EE. Artificial wetlands may include created wetlands and abandoned filled-in ponds. These also may be created by leaking irrigation structures or waste management systems and/or inadequate irrigation management, or by excavation or impoundments that retain ground or surface water.

Compensation is not required under this policy for irrigation or leakage-induced wetlands where no natural wetlands existed before the irrigation or waste management activity, though it may be regulated by other Federal agencies or State or local agencies.

If no natural wetlands exist and wetland hydrology exists only through irrigation or leakage, NRCS will continue to address other NEPA concerns as determined by findings of the EE. Planners will work to educate landowners about the important functions of wetlands and will encourage wetland conservation when implementing appropriate conservation practices.

#### F. NRCS Technical Assistance Procedures

(1) NRCS will consider protection of wetland functions to the maximum extent practicable when implementing planning and program activities, including when providing technical and financial assistance. The following procedures will apply:

(2) **Pre-conversion assistance:**

NRCS will complete an EE according to GM-190, Part 410, Section 410.5 and 7 C.F.R. Section 650.5. The client is responsible for obtaining all required Federal, State, Tribal, or local permits.

The EE shall identify the findings of the mitigation sequencing process of: (1) avoidance, (2) minimization, and/or (3) compensation as provided here:

**Exempt**—If the finding from the functional assessment, which is documented on the EE, concludes the action will have no effect to wetlands, no mitigation under this policy will be necessary.

**Avoidance**—If adverse impacts to wetlands may result from a proposed action, NRCS will determine if there are any practicable alternatives that will avoid impacts to wetlands.

If there are practicable alternatives that avoid impacts to wetlands, NRCS will inform the client of the benefits of conducting the desired activity in a manner that will achieve his or her objectives while avoiding adverse impacts to wetlands. If the client selects a practicable alternative that avoids adverse impacts to existing wetlands, NRCS may help to plan, design, and implement the selected alternative. If there are practicable alternatives or other measures that will avoid the adverse impacts of the proposed activity on wetlands, and the client does not select such alternatives, NRCS will terminate all assistance on the project.

**Minimization**—If a practicable alternative is not identified that avoids adverse impacts to existing wetlands, then NRCS will identify and inform the client about measures that may minimize adverse impacts to wetlands. If the client is willing and able to minimize impacts to wetlands and still meet the project objective, then NRCS may help to plan, design, and implement the selected alternative. If there are practicable alternatives or other measures that will minimize the adverse impacts of the proposed activity on wetlands, while still meeting the conservation project needs, and the client does not select such alternatives or measures, then NRCS will terminate all assistance for the project.

**Compensation**—If the findings of the EE determine that adverse impacts cannot be avoided or minimized while still meeting the conservation needs, then compensation for lost wetland acres and function is required to continue NRCS assistance. NRCS may help the client to plan, design, and implement the compensatory mitigation plan.

-- NRCS will terminate all technical and financial assistance related to an activity that affects wetlands if –

- There are practicable alternatives or other measures that will avoid or minimize the adverse impacts of the proposed activity on wetlands, and the client does not select such alternatives or measures (even if the client is willing to provide compensation), or;
- The client does not obtain the necessary permits or implement appropriate compensation.

(3) **Post-conversion assistance:**

If a client has already adversely affected a wetland and requests technical assistance to:

Further impact the wetland, NRCS will confirm whether the client has complied with all Federal, State, Tribal, and local laws associated with the adverse affects and additional impact prior to providing any assistance or completing the EE and following the sequencing process provided in (1) above for the further impacts.

Compensate for lost acres and function, NRCS may, at the discretion of the State Conservationist, as part of the EE process, prepare and offer the client alternatives and projected functional gains that will compensate for the wetland impacts.

**G. Additional Guidance Related to Wetland Compensation**

(1) **Where necessary to further NRCS' mission**, NRCS may provide technical assistance for project activities that result in unavoidable impacts to wetlands, and will compensate for these impacts resulting from project activities, including but not limited to:

- (i) Draining
  - (ii) Dredging
  - (iii) Diking
  - (iv) Filling
  - (v) Leveling
  - (vi) Impounding
  - (vii) Pumping
  - (viii) Removing woody vegetation (may or may not include stumps).
- (2) **Preferred Types of Compensation:**
- (i) Of the four types of compensation, restoration is generally the preferred option from an ecological standpoint. Restoration reestablishes wetland function to the levels present before alteration. Restoration of wetland functions may occur on the site of the original alteration or off-site on another area where wetland functions have been altered. Creation may require much greater physical manipulation or management, may be more costly, and tends to have a higher risk of failure.
  - (ii) Enhancement, if it increases overall function or functions beyond what existed naturally, will generally reduce some wetland functions. Reduction of certain wetland functions must be weighed against the benefits of the gain in other functions.
  - (iii) Preservation of existing wetlands does not replace wetland functions and will be an option only under exceptional circumstances (e.g., the wetlands perform particular physical and biological functions that are important to preserve in the watershed or region and are under demonstrable threat of loss or degradation by human activities that may not otherwise be restricted). Preservation will typically require a much greater area of compensation than would restoration, creation, or enhancement.

**NOTE:** Guidance on environmentally preferable compensation can be found in the National Wetlands Mitigation Action Plan (<http://www.mitigationactionplan.gov/>).

(3) **Functional Assessment:**

As part of the compensation process, the functions of the affected wetland and the amount of function lost must be determined. The State Conservationist will establish an appropriate assessment procedure to evaluate wetland functions and impacts, determine the type and extent of compensation required, and evaluate the success of the compensation.

(4) **Wetland Restoration and Enhancement Projects:**

Projects designed to restore or enhance specific wetland functions, and which result in a net gain of wetland functions, may not require additional compensation. As discussed above, enhancing a particular function of an existing wetland may reduce other wetland functions, and this reduction must be weighed against the benefits of the gain in the overall functions.

**H. Mitigation Banking:**

- (1) Mitigation banking may be used when compensatory mitigation cannot be achieved at the site of the wetland impact or when it is ecologically preferable to mitigate off-site. A mitigation bank is a site where wetlands and/or other aquatic resources are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. Mitigation banks are typically an option only when they are established in the same watershed as the converted wetland.
- (2) Refer to the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (November 28, 1995).
- (3) **Planning, Evaluating, and Monitoring Compensation**
  - (i) The success or failure of compensation depends on planning, site evaluation, project

design, and monitoring. In the compensation process, NRCS must assess wetland losses, locate a suitable compensation site; and design, construct, and monitor the replacement wetland. An example of the planning process for compensation is found in the National Food Security Act Manual.

(ii) The use of NRCS program funds to pay for compensation activities is governed by the specific program authority.

#### I. Public Review

NRCS will provide an opportunity for public review of activities that involve impacts to wetlands for NRCS projects or activities consistent with the public participation policy described in Section 410.9 (d) of this part.

### 410.27 Channel Modification Guidelines

#### A. Purpose

These guidelines were developed by the Natural Resources Conservation Service (NRCS) and the Fish and Wildlife Service (FWS) to guide their personnel in identifying when and where channel modification may be used as a technique for implementing water and related land resource projects.

They will be used in the planning of all NRCS projects or measures which qualify for either technical, financial, and/or credit assistance under the authorities for flood prevention projects, small watershed projects, and resource conservation and development projects. These program authorities contain provisions for maintaining and enhancing fish and wildlife resources as well as achieving other water management objectives.

#### B. Policy

- (1) It is the policy of NRCS and FWS that care and effort will be made to maintain and restore streams, wetlands, and riparian vegetation as functioning parts of a viable ecosystem upon which fish and wildlife resources depend. It is also the policy of NRCS and FWS to use an interdisciplinary planning process which will permit a balancing of the need to maintain a viable, naturally functioning ecosystem, and providing food and fiber, economic, and other social needs.
- (2) The application of these guidelines and the resource inventory, interpretation, and planning assistance provided by NRCS and FWS will ensure identification and consideration of alternatives to channel modification.

#### C. Applicability

These guidelines become effective as of the date they are approved. They will be applied to:

- (i) All new planning starts.
- (ii) All projects in the planning phase, unless NRCS and FWS agree it is not important and feasible to apply the guidelines.
- (iii) All projects approved for construction.

When supplements or revisions are prepared to plans or analyses which would result in an increase in the amount or type of channel modification, which would increase the potential adverse environmental impact.

When NRCS and FWS agree that:

- Important fish and wildlife habitat is involved and threatened.
- Project modification is practicable.
- Project modification to minimize adverse environmental impact has not been

accomplished as a result of reviews mandated by the National Environmental Policy Act (NEPA) or other Congressional, Presidential, or Secretarial initiatives.

#### D. Background

- (1) Congress has recognized that erosion, floodwater, and sediment can cause damage in the watersheds of the rivers and streams of the United States. It has found that loss of life and damage to property constitute a menace to the national welfare and that the Federal Government should cooperate with States and their political subdivisions for the purposes of preventing such damages and of furthering the conservation, development, utilization, and disposal of water. In so doing, this action will also preserve, protect, and improve the Nation's land and water resources and the quality of the environment.
- (2) Congress has also recognized that rivers, streams, wetlands, and riparian vegetation constitute a valuable resource which is vital to the public interest in naturally functioning ecosystems, water transport, and maintenance of fish and wildlife populations. Dependent upon the situation, wetlands can serve as:
  - (i) Natural flood detention areas.
  - (ii) Sediment and debris traps.
  - (iii) Water purifiers and in recycling nutrients.
  - (iv) Groundwater recharge areas.
  - (v) Nursery areas for aquatic animal species.
  - (vi) Important habitats for a wide variety of plant and animal species, some of which have been depleted to the point that their continued existence is endangered.
  - (vii) Areas which produce highly valuable crops of timber, fish, and wildlife.
- (3) High flows in rivers and streams and periodic overflow have significant value in creating and

maintaining meandering channels and in cleansing and redistributing substrates. This action by water provides riffles, pools, or other habitat for fish spawning and rearing and production of aquatic invertebrates. It also provides diverse plant successional areas and other types of shoreline habitat that fulfill fish and wildlife food and cover requirements. However, it is also recognized that many areas adjacent to streams and wetlands are well suited for, and have a long history of, agricultural and urban uses.

(4) Channel modification, used in a sensitive manner, is one method that can be utilized in solving specific water management problems. It may be needed to restore a water course impaired or damaged naturally or through man's unwise use or management of adjacent or upstream lands. It may also be needed to provide a safe and healthy environment and for the maintenance of existing agricultural productivity.

(5) However, channel modification can cause serious damage to fish and wildlife resource values. In addition to the direct impact on the stream and immediate environs, the practice has, on occasion, led directly or indirectly to major drainage of wetlands, clearing of bottomland forests for intensive agriculture, and increased flooding and siltation in downstream areas.

Channel modification for flood control, drainage, and irrigation projects has often resulted in severe conflict with the function of the associated ecosystems, changing or reducing both the variety and abundance of fish and wildlife resources.

(6) Because of the variety of values associated with water, it is incumbent upon NRCS and FWS to continue to share their technical expertise to help ensure decisions which will result in the maximum benefits to assure long-term agricultural productivity and optimum environmental quality.

#### E. Guidelines and Alternatives

(1) The guidelines for channel modification will be used when formulating alternative plans under the Water Resources Council's Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies. The planning process will include an inventory of resources, including fish and wildlife habitats, and their geographic delineation.

It will also identify appropriate means for minimizing adverse impacts on habitat values.

Measurement of habitat values will be determined on a case-by-case basis in accordance with habitat evaluation procedures promulgated by FWS and developed jointly with NRCS.

(2) Alternative plans will be formulated to:

(i) Optimize national economic development.

(ii) Emphasize environmental quality consistent with NEPA requirements (40 CFR 1502.14 and 1505.2, see Exhibit Section 410.30(a)).

(iii) Provide varying mixes of economic and environmental components.

(3) The formulation of these plans will include inputs from all interested agencies, organizations, or individuals interacting with sponsoring local organizations. For each alternative plan, there will be a display or accounting of relevant beneficial and adverse effects. Within this framework, and in compliance with the requirements of NEPA, consideration will be given to environmental, economic, and technical aspects in the decision making process.

(4) In compliance with the mandates of NEPA and the Water Resources Council's Economic and Environmental Principles and Guidelines, FWS will assist NRCS to develop, evaluate, and recommend alternatives, if any, to channel modification when it is expected to cause, directly or indirectly, measurable losses of fish and wildlife resources. Channel modifications will not be considered if a practical alternative exists.

(5) A practical alternative is one which meets all of the following tests:

(i) Is consistent with the Water Resource Council's Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies.

(ii) Makes a significant contribution to project objectives.

(iii) Results in less damage to fish and wildlife habitat.

(6) Channel modification will normally emerge as a last resort measure.

(7) The following three broad types of alternatives will be considered singly or in combination:

(i) Soil and Water Conservation Practices.

(ii) Nonstructural. Nonstructural measures may include, but are not limited to, land use regulation, land acquisition, the maintenance of aquatic areas, flood plain zoning, flood-proofing existing buildings, flood forecasting, flood warning, flood hazard information, flood insurance, tax adjustments, emergency assistance, and relocation of properties and people.

(iii) Structural. Structural alternatives to channel modification include, but are not limited to, dams, floodways, dikes, levees (including set back levees), flood walls, pumping plants, diversions, wetland development, maintenance, and restoration.

#### F. Types of Channel Modification

Channel modification is defined in these guidelines to include actions such as rip-rapping, selective snagging, clearing and snagging, widening, deepening, realignment, and lining, listed generally in order of ascending impact on fish and wildlife resources.

##### (1) Selective Snagging

Selective snagging is defined as selective removal of obstructions from the channel and streambanks to increase its capacity to convey water. Removal operations are performed primarily with hand-operated equipment, water-based equipment, or small equipment used in a manner that will minimize soil and water disturbances. This includes the removal of downed

timber, trees likely to fall into the channel at an early date, and accumulations of debris, sediment, or obstructions that will adversely impact design flow requirements.

#### (2) Clearing and Snagging

Clearing and snagging is the removal of obstructions from the channel and streambanks, including the removal of vegetation and accumulations of bedload material, to increase its capacity to convey water. It may include the removal of sediment bars, drifts, logs, snags, boulders, pilings, piers, headwalls, and debris.

#### (3) Rip-rapping

Rip-rapping is defined as the placement of irregular permanent materials, such as rock, in critical areas along the watercourse to protect the earth materials against excessive erosive forces.

#### (4) Widening

Widening is the overall widening of a channel to restore or increase its capacity to convey water. This usually involves clearing, snagging, and excavation of a portion of the channel side slope (s). Where practical, widening is performed on one side only with appropriate consideration given to alternating from one side to the other.

#### (5) Deepening

Deepening is defined as the overall deepening of a channel to increase its capacity to convey water and/or provide drainage. Deepening usually involves clearing or snagging and excavation of a portion of the channel bottom and the channel side-slope(s).

#### (6) Realignment

Realignment is the construction of a new channel or a new alignment which may involve the clearing, snagging, widening, and/or deepening of the existing channel where the new alignment coincides with the existing channel. It may include straightening the alignment to restore or increase the capacity of the channel to convey water.

#### (7) Lining

Lining is the placement of a non-vegetative protective lining over all or part of the perimeter of a channel to prevent erosion or to increase the capacity of the channel to convey or conserve water.

### G. Wetlands

The wetland types referred to in this guideline are those described in Circular 39, published by the U. S. Department of the Interior, FWS in 1956, and reprinted in 1971.

### H. Criteria for Channel Modification as an Alternative

(1) The following criteria will be utilized in the planning process for determining when channel modification can be considered an alternative. If used, channel modification will be the minimum required, either alone or in combination with other measures. It will be accomplished using the least damaging construction techniques and equipment in order to retain as much of the existing characteristics of the channel and riparian habitat as possible. Such construction practices include, but are not limited to, seasonal construction, minimum clearing, reshaping spoil, limiting excavation to one bank (on alternating sides where appropriate), and prompt revegetation of disturbed areas.

(2) Channel modification may be considered as an alternative for project purposes for which NRCS is currently authorized by law and which are in conformance with agency (NRCS) policy and regulations, provided the modification is designed to resolve specific problems and would not cause directly or indirectly any of the following to occur:

(i) Jeopardize the continued existence of endangered and threatened species by the destruction or modification of habitat of such species which is determined to be critical under the Endangered Species Act of 1973, (as amended), or species similarly classified under law of the State(s) in which the project is located.

(ii) Result in restricted access to use of streams or stream segments developed specifically for recreation or fish and wildlife use by the general public.

(iii) The intent or purpose is to drain or otherwise alter wetland types 3 through 20, or the result of the modification would be to indirectly alter wetland types 3 through 20, and provisions for appropriate mitigation or compensation by establishment of similar habitat values in the project area are not provided.

(iv) The intent or purpose is to alter wetland types 1 and 2, including conversion to cropland, pastureland, or other uses unless the land has been cultivated to produce food, feed, fiber, and/or oilseed for at least 3 of the 5 years before the request for assistance. In any case, their preservation will be strongly recommended when they are adjacent to wetland types 3 through 20, or are needed to maintain a balanced aquatic or semi-aquatic ecosystem.

(3) Channel modification will not be considered as an alternative unless it can be accomplished with little or no direct or indirect adverse effect on:

(i) Stream or stream segments now designated or undergoing study under the Wild and Scenic Rivers Act, or officially designated pursuant to other Federal or State legislative actions for their important natural, aesthetic, or recreational values.

(ii) Streams located in, or flowing through, or contiguous to, established wilderness areas, parks, refuges, or other areas set aside pursuant to Federal or State legislative actions for fish and wildlife esthetic or recreational values.

(iii) Important fish and wildlife habitat values, including riparian habitat, in the project impact area, State, or Nation after providing for all appropriate mitigation, compensation, or preservation measures. Conservation easements or other comparable means will be utilized wherever necessary to provide reasonable life of project protection for wetlands or riparian areas subject to secondary drainage predicted to occur as a result of, or be facilitated by, channel modification. (Measurements of habitat values will be determined on a case-by-case basis in accordance with habitat evaluation procedures to be promulgated by FWS and developed jointly with NRCS.)

(4) A rule of reason must be used in applying these guidelines and determining the actual net effects and their significance at the field level, considering the value of the resource and importance of the project objectives.

I. Coordination and Interaction

(1) FWS and NRCS recognize that the application of the above guidelines can most effectively be accomplished through cooperative effort during all planning phases of a water resources project. FWS and NRCS will work cooperatively with State fish and wildlife agencies to inventory and assess fish and wildlife resources and to plan alternatives, enhancements, replacement, or necessary mitigation measures.

(2) The level of effort to be devoted by FWS to each watershed project will be proportional to the value of the resources and expected impact on fish and wildlife. If FWS determines at any stage of planning that it cannot, for any reason, participate, it will notify NRCS in writing, stating reasons for discontinued participation. Even though FWS discontinues participation in planning, they will eventually, as prescribed by law, become involved with reviewing and commenting on the watershed plan. In such instances, FWS will not oppose the project plan on the basis of channel modifications unless it is clearly evident that the plan is not in conformance with the provisions of these guidelines after consultation with NRCS determining this to be the case.

(3) The detailed procedures shown in Section 410.28 will be used in the planning of water resource projects. The coordination identified is between the field levels of FWS and NRCS; however, both agencies recognize that planning will always involve State fish and wildlife agencies, as well as the interested public and sponsoring agencies, at all stages throughout the planning process.

J. Resolution of Issues

(1) General

It is recognized that issues may develop which cannot be resolved at the field level. When issues arise, it will be the practice of FWS and NRCS to refer such cases and issues to the next higher respective administrative level for resolution and ultimately, if necessary, to the Secretaries of Agriculture and the Interior. The Secretary of Agriculture will seek the advice and counsel of the Secretary of the Interior in reaching a decision. Consultation between the two agencies will, at each level, occur throughout the decision process.

(2) Procedure

Most of the problems in applying the guidelines will be identified at the field planning level.

When this occurs, the NRCS Planning Staff Leader will consult directly with the FWS Field Supervisor (Ecological Services or ES) and attempt to resolve the issue.

(3) Should the NRCS Planning Staff Leader and the FWS Field Supervisor (ES) be unable to reach an agreement, the issue should be referred and coordinated as follows:

USDA IN CONSULTATION WITH	DOI
State Conservationist, NRCS	Area Manager, FWS
Chief, NRCS	Director, FWS
Assistant Secretary for Natural Resources and Environment	Assistant Secretary for Fish and Wildlife and Parks
Secretary of Agriculture	Secretary of the Interior

(4) Each level of review normally shall be completed in 45 days. Additional time may be required when new data is needed to resolve the issue.

(5) The decision on whether channel modification will be part of a project plan shall rest with the Secretary of Agriculture. If disagreement still exists at the Secretary's level, the FWS views and recommendations will be appended to the project plan.

(6) At all levels in the decision process, the desires and needs of the local sponsors, environmental groups, State and Federal agencies, and interested public will be taken fully into account.

**410.28 Channel Modification Guidelines Coordination of Field Level Planning Detailed**

---

## Procedures

### General

All steps apply to planning for small watershed projects. Appropriate steps will be followed for Public Law 534 and Resource Conservation and Development measures planning.

[Click here for a copy of the field level planning detailed procedures](#)

## Subpart C - Exhibits

### 410.30 CEQ Terminology and Index

#### A. General

Council on Environmental Quality (CEQ) material referenced in this manual, was obtained from 40 CFR Parts 1500-1507, and can be obtained from NRCS State offices. Only 40 CFR Part 1508 (Terminology and Index) is presented in this directive.

#### B. Terminology

The terminology of this part shall be uniform throughout the Federal Government.

(i) "Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

(ii) "Affecting" means all or may have an effect on.

(iii) "Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of the CEQ regulations (40 CFR 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Section 410.30(b) (9) even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

(iv) "Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in 40 CFR 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian tribe, may by agreement with the lead agency become a cooperating agency.

(v) "Council" means the Council on Environmental Quality established by Title II of the Act.

(vi) "Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

(vii) "Effects" include:

Direct effects, which are impacts caused by the action and occur at the same time and place.

Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water, and other natural systems, including ecosystems.

Effects and impacts as used in the CEQ regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

(viii) "Environmental assessment" means a concise public document for which a Federal agency is responsible that serves to:

Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact;

Aid an agency's compliance with NEPA when no environmental impact statement is necessary; and

Facilitate preparation of an environmental impact statement when one is necessary;

(ix) "Environmental document" includes the documents specified in Section 410.30 (b)(9) (environmental assessment), Section 410.30(b)(14) (finding of no significant impact), and Section 410.30(b)(22) (notice of intent).

(x) "Environmental impact statement" means a detailed written statement as required by Section 102(2)(C) of the Act.

(xi) "Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under Section 104(h) of the Housing and Community Development Act of 1974.

(xii) "Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Section 410.30(b)(4)), will not have a significant effect on the human environment and for which an environmental impact

statement 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 (40 CFR 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.

(xiii) "Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" Section 410.30(b)(8)). This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement.

When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

(xiv) "Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

(xv) "Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

(xvi) "Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

(xvii) "Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Section 410.30(b)(27)). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(xviii) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (40 CFR 1506.8, 410.30(b)(17)). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(xix) Federal actions tend to fall within one of the following categories:

Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

Adoption of formal plans, such as official documents prepared or approved by Federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision, as well as Federal and Federally assisted activities.

(xx) "Matter" includes for purposes of 40 CFR Part 1504:

With respect to the Environmental Protection Agency, any proposed legislation, project, action, or regulation as those terms are used in Section 309(a) of the Clean Air Act (42 U.S.C. 7609).

With respect to all other agencies, any proposed major Federal action to which Section 102(2)(C) of NEPA applies.

(xxi) "Mitigation" includes:

Avoiding the impact altogether by not taking a certain action or parts of an action.

Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

Compensating for the impact by replacing or providing substitute resources or environments.

(xxii) "NEPA process" means all measures necessary for compliance with the requirements of Section 2 and Title I of NEPA.

(xxiii) "Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

Describe the proposed action and possible alternatives.

Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

(xxiv) "Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (40 CFR 1502.5) so that the final statement may be completed in time for it to be included in any recommendation or report on the proposal. A proposal may exist in fact, as well as by agency declaration that one exists.

(xxv) "Referring agency" means the Federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health, welfare, or environmental quality.

(xxvi) "Scope" consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (40 CFR 1502.20 and 410.30(b)(28)). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(xxvii) Actions (other than unconnected single actions) which may be:

Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they automatically trigger other actions which may require environmental impact statements. Actions cannot or will not proceed unless other actions are taken previously or simultaneously. Actions are interdependent parts of a larger action and depend on the larger action for their justification.

Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should, therefore, be discussed in the same impact statement

Similar actions, which when viewed with other reasonable foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(xxviii) Alternatives considered may include:

The No Action alternative.

Other reasonable courses of actions.

Alternatives with mitigation measures (not in the proposed action).

(xxvix) Impacts to be evaluated include:

Direct.

Indirect.

Cumulative.

(xxx) "Special expertise" means statutory responsibility, agency mission, or related program experience.

(xxxi) "Significantly" as used in NEPA requires considerations of both context and intensity.

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, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

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:

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.

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

Unique characteristics of the geographic area such as proximity to historic or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical

areas.

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

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

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.

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.

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.

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 1976.

Whether the action threatens a violation of Federal, State, or local law or requirements imposed to the protection of the environment.

**(xxxii) "Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrowing statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.**

Tiering is appropriate when the sequence of statements or analyses are:

From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.