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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 650

RIN 0578–AA55

Compliance With NEPA

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture

ACTION: Interim final rule with request for comment.

SUMMARY: The Natural Resources Conservation Service (NRCS or the Agency) publishes this interim final rule to request comments on additional categorical exclusions, which are actions that the agency has determined do not individually or cumulatively have a significant effect on the human environment and, thus, should not require preparing an environmental assessment (EA) or environmental impact statement (EIS) under the National Environmental Policy Act (NEPA). NRCS' categorical exclusion actions promote restoration and conservation activities related to natural or human induced damage, or alteration of floodplain easements and watershed areas. For projects being funded under the American Recovery and Reinvestment Act of 2009 (ARRA), the interim final rule will assist NRCS in meeting mandates set forth in ARRA and NEPA for undertaking actions in the most expeditious manner and in compliance with NEPA.

DATES: *Effective Date:* The rule is effective July 13, 2009.

Comment date: Submit comments on or before September 11, 2009.

ADDRESSES: You may send comments (identified by Docket Number NRCS–0578–AA55) using any of the following methods:

- *Government-wide rulemaking Web site: http://www.regulations.gov* and follow the instructions for sending comments electronically.
- *E-mail: NEPA2008@wdc.usda.gov.*
- *Mail:* Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Washington, DC 20250.
- *Fax:* (202) 720–2646.
- *Hand Delivery:* USDA South Building, 1400 Independence Avenue, SW., Room 6158, Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720–2587 in order to be escorted into the building.

This interim final rule may be accessed via Internet. Users can access the interim final rule at: *http://www.nrcs.usda.gov/programs/Env_Assess/index.html.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Washington DC 20250; Phone: (202) 720–4925; Fax: (202) 720–2646; or e-mail *NEPA2008@wdc.usda.gov*, and identify in the subject line, "Information Requested."

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

The Office of Management and Budget has determined that this interim final rule is a non-significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(c) of the Regulatory Flexibility Act, NRCS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required for this interim final rule.

Environmental Analysis

This interim final rule amends the procedures for implementing NEPA at 7 CFR part 650 and will not directly impact the environment. An agency's NEPA procedures are guidance to assist that agency in its fulfillment of responsibilities under NEPA, but are not that agency's final determination of what level of NEPA analysis is required for a particular action. The CEQ set forth the requirements for establishing agency NEPA procedures in its regulations at 40 CFR 1505.1 and 1507.3. The CEQ regulations do not require agencies to conduct NEPA analyses or prepare NEPA documentation when establishing their NEPA procedures. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service*, 230 F.3d 947, 954–55 (7th Cir. 2000).

Paperwork Reduction Act

There are no requirements for information collection associated with this interim final rule that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

NRCS assessed the effects of this rulemaking action on State, local, or Tribal governments and the public. This action does not compel the expenditure of $100 million or more in any one year (adjusted for inflation) by any State, local, or Tribal governments or anyone in the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this interim final rule: (1) All State and local laws and regulations that conflict with this rule, or that would impede full implementation of this rule, will be preempted; (2) no retroactive effect would be given to this interim final rule; and (3) before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR part 614 must be exhausted.

Federalism

NRCS has considered this interim final rule under the requirements of Executive Order 13132. NRCS has determined that this interim final rule would not impose any compliance costs on the States and would not have substantial direct effects on the States, on the relationship between the National Government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS has determined that this interim final rule conforms to the principles set forth in Executive Order 13132.

Energy Effects

NRCS has determined that this interim final rule does not constitute a significant energy action as defined in Executive Order 13211.

Background

NRCS finds that this amendment should proceed as an interim final rule. This interim final rule will facilitate the delivery of assistance under the ARRA for which timely delivery is of the essence. The actions identified have been subject to prior extensive environmental review that demonstrates that they do not individually or cumulatively have a significant effect on the human environment. The agency will evaluate each agency undertaking to ensure whether the undertaking meets the criteria of the categorical exclusion, or whether extraordinary circumstances exist which require additional environmental review. Given these safeguards, NRCS has determined that to proceed through a prior notice of proposed rulemaking would be impracticable, unnecessary, and contrary to the public interest in the efficient implementation of conservation programs.

I. National Environmental Policy Act

NEPA requires that Federal agencies consider the environmental effects or impacts of proposed Federal actions. NEPA requirements apply to any Federally funded or undertaken project, decision, or action, including grants. NEPA also established the Council on Environmental Quality (CEQ), which issued regulations at 50 CFR parts 1500–1508 implementing the procedural provisions of NEPA.

The CEQ regulations require Federal agencies to adopt their own implementing procedures to supplement the Council's regulations, and to establish and use categorical exclusions to define categories of actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require preparation of an EA or EIS (40 CFR 1507.3(b)(2)(ii) and 40 CFR 1508.4).

II. NRCS' Environmental Review Process

NRCS follows CEQ regulations for complying with NEPA. In addition, NRCS has supplemental regulations for NEPA compliance at 7 CFR part 650. Consistent with the CEQ regulations at 40 CFR 1508.4, NRCS defines "categorical exclusion" to mean "a category of actions that does not individually or cumulatively have a significant effect on the human environment * * *" and that has been found by NRCS to have no such effect. These supplemental regulations require that the Responsible Federal Official (RFO) must determine whether the proposed action fits within a categorical exclusion listed in the agency's implementing NEPA regulations (*see* 7 CFR 650.6(a)), and the proposed action does not involve any extraordinary circumstances (*see* 7 CFR 650.6(b)).

Section 650.6 currently identifies five actions that are categorically excluded from detailed review under NEPA. This interim final rule amends § 650.6 to identify an additional 21 actions as categorically excluded from detailed review through an EA or an EIS. Some of the new categorical exclusions are comparable in nature and scope to categorical exclusions of other Federal agencies. NRCS determined the new categorical exclusions routinely do not individually or cumulatively have a significant effect on the human environment. The statement supporting the categorical exclusions is available for review at the following Web site: *http://www.nrcs.usda.gov/programs/Env_Assess/index.html* or upon request from the NRCS National Environmental Coordinator.

NRCS has not updated its list of categorical exclusions since 1979. However, NRCS has over 70 years of experience (since the agency's establishment in 1935) with the actions being added to the agency's list of categorical exclusions. Based upon this experience and other data and analyses described below, NRCS has determined these actions as appropriate for incorporation in 7 CFR 650.6 as categorical exclusions.

As established in this interim final rule, NRCS will satisfy NEPA when using these categorical exclusions by determining whether a proposed agency action falls within the description of the activities and by reviewing the proposed agency action to determine whether extraordinary circumstances exist. In the event extraordinary circumstances exist, NRCS will prepare an EA or an EIS before proceeding with the proposed action (*see* 7 CFR 650.6(a) and (b)).

As noted in the statement supporting the categorical exclusions, NRCS provides support for each action being added to the categorical exclusion list by citing: (1) Other agencies that currently have categorical exclusions for actions which are comparable in nature to the action(s) NRCS is adding as new categorical exclusions; (2) the findings of the NRCS interdisciplinary teams' reviews, which are explained below; and (3) previous environmental reviews prepared by NRCS for these actions. By identifying these additional actions as categorical exclusions, NRCS is better able to meet the mandates of NRCS and CEQ NEPA regulations by providing for the efficient and timely environmental review of restoration and conservation activities. CEQ does not require agencies to prepare a NEPA analysis or document before establishing agency protocols or procedures that supplement the CEQ regulations for implementing NEPA.

III. NRCS Restoration and Conservation Planning

Since 1935, NRCS has assisted private individuals, conservation districts, Indian Tribes, units of government, and other organizations to apply conservation plans to conserve the Nation's natural resources, primarily on private agricultural lands. This is accomplished in partnership with locally led decision-making processes by providing conservation assistance through a national network of technically skilled, professional conservationists. These conservationists deliver consistent, science-based, site-specific solutions to help private landowners voluntarily conserve, maintain, and improve the Nation's natural resource base.

All NRCS actions are planned according to the requirements described in the NRCS National Planning Procedures Handbook. The Handbook prescribes that all planning be conducted through the use of a planning process, which includes the following nine steps:

1. Problem Identification.
2. Determine Objectives.
3. Inventory Resources.
4. Analyze Resource Data.
5. Formulate Alternatives.
6. Evaluate Alternatives.
7. Make Decisions.
8. Implement Plan.
9. Evaluate Plan.

NRCS conducts an Environmental Evaluation (EE), as required by 7 CFR

650.5, throughout the planning process, and incorporates environmental considerations throughout planning, installation, and operation of NRCS-assisted actions. By conducting the EE, NRCS is able to identify the appropriate level of environmental documentation and analysis required for a particular action.

Conservation practices are required to meet sustainable levels of quality criteria established in Section III of the Field Office Technical Guide (FOTG), for soil, water, air, plant, animal, and human resources. *See http://www.nrcs.usda.gov/technical/efotg/.* Additionally, all conservation practice implementation is governed by established conservation practice standards contained in Section IV of the FOTG.

The design and implementation of conservation practices must also meet technical and environmental criteria in NRCS manuals, handbooks, and publications, which in turn are developed through a peer and public review process.

NRCS obtains input about conservation practices from the State Technical Committees established pursuant to 16 U.S.C. 3861. NRCS also obtains public input about conservation practices by publishing in the Federal Register notice of any new conservation practice standard to be incorporated into the FOTG. In addition to State Technical Committee and Federal Register reviews, public participation is further accomplished through coordinating the implementation of NRCS activities with local Soil and Water Conservation Districts (SWCD). SWCD board members are comprised of local landowners, elected by the public, to represent community interests, advocate conservation, assist NRCS in setting local resource priorities, and approving conservation plans. All technical and financial assistance provided by NRCS is voluntary and is provided in partnership with the local SWCD at the request of an individual, unit of government, Indian Tribe, or sponsoring organization.

IV. Process Used To Identify the Categorical Exclusions

For all the actions added to 7 CFR 650.6 as categorical exclusions and described below, NRCS convened a group of interdisciplinary experts to review agency actions and determine whether the actions should be considered as a new categorical exclusion based upon their experience, expertise, and environmental review. The interdisciplinary team also considered comparable categorical exclusions from other agencies throughout the Federal Government that conduct similar activities under similar circumstances. In addition to the interdisciplinary team, NRCS also collected environmental review information from a sample of its State and field offices that have undertaken these actions over the past 70 years. The State and field offices providing information were: California, Colorado, Georgia, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Nebraska, New Hampshire, Oklahoma, Oregon, Rhode Island, and Texas. Overall, the environmental documentation information reported by these States showed that implementation of these categorical exclusions has not resulted in individually or cumulatively significant environmental effects.

These 14 States provided a random sample of conservation activities, and coincidentally these random samples encompassed agency actions within 11 of the 12 major river basins in the continental United States. Concurrent with the public comment period, NRCS is requesting information to be submitted from State and field offices within the remaining 12th river basin [Great Lakes River Basin] which includes: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin, and will incorporate any additional information gained from this input and public comment in the development of the final rule. The information provided in the statement supporting the categorical exclusions includes Damage Survey Reports containing an EE, EA, and EIS prepared over a 9-year period (2000–2009) for the actions to be categorically excluded.

V. Categorical Exclusions for Restoration and Conservation Actions

All the actions identified as a categorical exclusion below require documentation in accordance with 7 CFR 650.6 that address whether extraordinary circumstances are determined to exist. Furthermore, the following categorical exclusions only apply to proposed actions that: (1) Include provisions to mitigate soil erosion, sedimentation, and downstream flooding; (2) require disturbed areas to be vegetated with adapted species; (3) are based on the principles of natural stream dynamics and processes presented in the Federal Interagency Stream Corridor Restoration Working Group document (*http://www.nrcs.usda.gov/technical/stream_restoration/*), "Stream Corridor Restoration, Principles, Processes, and Practices;" (4) incorporate the applicable NRCS conservation practice standards as found in the FOTG [*http://www.nrcs.usda.gov/technical/efotg/*]; (5) do not require substantial dredging, excavation, or placement of fill; and (6) do not involve a significant risk of exposure to toxic or hazardous substances.

The identification of these actions as categorical exclusions under NEPA does not relinquish the responsibility of NRCS to comply with the mandatory consultation requirements under the National Historic Preservation Act and implementing regulations, the Endangered Species Act and implementing regulations, and any other legal requirements.

The following actions are being added to 7 CFR 650.6 as categorical exclusions:

1. Planting appropriate herbaceous and/or woody vegetation on disturbed sites to restore and/or maintain the site's pre-disturbance vegetative community or similar adaptive naturalized vegetative community that provides analogous 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 had 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/or natural and cultural resources and removal is necessary to restore lands to pre-disaster conditions

to the extent practicable. Excavation shall 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, and 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: (1) Installation of fences, and (2) 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/or 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 erosion control measures on existing agricultural lands, such as grade stabilization structures (pipe drops), sediment basins, terraces, grassed waterways, filter strips, riparian forest buffer, and critical area planting; and

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

In addition to identifying these actions as categorical exclusions, NRCS is making editorial adjustments to § 650.6 to clarify the process that applies to the programs originally identified as categorical exclusions under § 650.6(a), and the new categorical exclusions identified in a new paragraph (c). In particular, paragraph (b) of § 650.6 is revised to indicate that the procedures identified therein apply specifically to the programs identified in paragraph (a).

The public is invited to submit comments on both the "The Statement Supporting the Proposed Categorical Exclusions" and the categorical exclusions listed above. *See* the ADDRESSES for instructions on submitting comments. "The Statement Supporting the Proposed Categorical Exclusions" is available at *http://www.nrcs.usda.gov/programs/Env_Assess/index.html* under "NRCS' Proposed Expanded List of Categorical Exclusions." In addition, hard copies may be obtained by contacting the NRCS National Environmental Coordinator, as provided above.

List of Subjects in 7 CFR Part 650

Environmental impact statements, Flood plains.

■ For the reasons stated in the preamble, NRCS amends part 650 of Title 7 of the Code of Federal Regulations as set forth below:

PART 650—COMPLIANCE WITH NEPA

■ 1. The authority citation for part 650 is amended to read as follows:

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

■ 2. Section 650.6 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 650.6 Categorical Exclusions

* * * * *

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

(c) The NRCS restoration and conservation actions and activities identified in this paragraph (c) 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 to evaluate proposed activities for significant impacts and extraordinary circumstances using the significance criteria provided in 40 CFR 1508.27. In the absence of any extraordinary circumstances as determined through NRCS' EE review process, the activities will be able to proceed without preparation of an EA or EIS. Where

either significant impacts or extraordinary circumstances are determined to exist, the categorical exclusion will not apply and the appropriate documentation for compliance with NEPA will be prepared. The following actions are eligible for categorical exclusion:

(1) Planting appropriate herbaceous and/or woody vegetation on disturbed sites to restore and/or maintain the site's pre-disturbance vegetative community or similar adaptive naturalized vegetative community that provides analogous 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 had 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/or natural and cultural resources and removal is necessary to restore lands to pre-disaster conditions to the extent practicable. Excavation shall 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, and

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

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

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

* * * * *

Signed this 7th day of July, 2009, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. E9–16400 Filed 7–10–09; 8:45 am]

BILLING CODE 3410–16–P