

Wednesday, August 29, 1979

# Final Report Soil Conservation Service

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**Soil Conservation Service**

**7 CFR Part 650**

**Compliance With NEPA**

**AGENCY:** Soil Conservation Service (SCS), U.S. Department of Agriculture, (USDA).

**ACTION:** Final rule.

**SUMMARY:** This revised rule prescribes the general procedures for compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and the Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations (40 CFR 1500-1508) issued November 29, 1978. This revised rule expands Part 650, Subpart A, to include all programs administered by SCS. The SCS rule adopts the CEQ regulations in total. The CEQ regulations will be distributed with the final SCS procedures.

**EFFECTIVE DATE:** August 29, 1979.

**FOR FURTHER INFORMATION CONTACT:** Dr. Gary A. Margheim, Acting Director, Environmental Services Division, U.S. Department of Agriculture, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, (202) 447-3839.

**SUPPLEMENTARY INFORMATION:** On May 2, 1979, the Soil Conservation Service

published revised rules for implementation of NEPA in SCS-assisted project actions.

This rule is a total revision of the procedures for implementing NEPA used by SCS to comply with the regulations of the Council on Environmental Quality, 40 CFR 1500-1508, published November 29, 1978. These rules are expanded to include procedures for implementing NEPA in all SCS-assisted programs. Several data-gathering and inventoring programs of SCS are categorically excluded from requirements to prepare an environmental impact statement (EIS).

SCS is introducing a new phrase, "environmental evaluation (EE)," to describe the interdisciplinary planning that is carried out before SCS takes action in any program it administers. The phrase "environmental assessment (EA)" was formerly used by SCS to describe this part of the planning process. The definition "environmental assessment" in the new CEQ regulations 40 CFR 1508.9 depicts a document rather than a process, making it necessary for SCS to use a new phrase.

These rules have been developed in consultation with the staff of the Council on Environmental Quality and are consistent with the NEPA procedures of the Secretary of Agriculture.

These proposed rules have been determined to be significant under Executive Order 12044 "Improving Government Regulations." An approved impact analysis is available by contacting Dr. Gary A. Margheim, Acting Director, Environmental Services Division, U.S. Department of Agriculture, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013, (202) 447-3839.

During the 45-day commenting period, seven letters of comment were received on the proposed rules. Two letters were from Federal agencies, one letter was from a State agency, two letters were from State conservation associations, and two letters were from individuals. All written comments were considered in developing the final rules. In addition, a national briefing on the proposed revised rules was conducted on Monday, May 21, 1979. The full text of all comments received is on file and available for public inspection in Room 6105, South Agriculture Building, Environmental Services Division, SCS, USDA, Washington, D.C. 20013.

The principal points raised by those submitting written comments and the SCS response to each are as follows:

*Comment 1:* One comment suggested that SCS's rules should clearly state how NEPA compliance applies to SCS's Emergency Assistance Program under

Section 216 of the Flood Control Act of May 17, 1950.

*Response:* Actions under Section 216 of Pub. L. 81-516 are treated no different from other actions administered by SCS. Because potential effects of this program on the human environment are at least cumulatively significant, SCS has filed a final program EIS. If an individual environmental evaluation of a proposed action under this act indicates that it will not meet the circumstances considered in the program EIS, additional environmental documentation would be required. Only very unusual actions under any program would require exceptions under 40 CFR 1506.11. The program EIS provides information on environmental compliance procedures. Special treatment in these actions is therefore not warranted.

*Comment 2:* One agency requested nonstructural alternatives also be discussed in § 650.7(b)(3), Alternatives.

*Response:* SCS does not believe that a requirement for discussions of nonstructural alternatives for all situations should be included in the NEPA rules. The discussion of environmental evaluation in § 650.5(a)(3) states: "In SCS-assisted project actions, nonstructural, water conservation, and other alternatives that are in keeping with the Water Resources Council's Principles and Standards are to be considered if appropriate." This statement adequately reflects SCS procedural guidance for consideration of alternatives.

*Comment 3:* One agency indicated that in § 650.3(b)(8), SCS environmental policy, SCS should require, rather than encourage, local project sponsors to review with interested publics the operation and maintenance (O&M) of practices and programs specified in the contracts for projects. SCS should also indicate the details of O&M needed in a plan, as well as discuss mitigation.

*Response:* SCS monitors its programs to ensure compliance with the requirements of NEPA and to cooperate with other agencies in determining that environmental safeguards are carried out according to plans and project agreements. As part of specific NEPA documents such as an EIS, O&M is described in the same detail as other installation features. This information is available at public meetings to discuss with interested publics and is included in review drafts.

SCS has no authority to require sponsors to hold additional specific public participation activities for completed projects. However, SCS would do the appropriate inspections and monitoring of completed projects to

see that planned works operate as indicated in specific environmental documents. SCS does not believe that it is appropriate in these implementing procedures to present the details of O&M needed for all actions. These details are appropriate in the O&M plans for individual projects or in agency O&M manuals. SCS should not specifically discuss mitigation (§ 1505.3) in the policy section of its procedures.

*Comment 4:* One agency suggested that SCS remove the word "significant" in § 650.7(a)(1), and insert the phrase "or wildlife" after the words "aquatic."

*Response:* Section 650.7(a)(1) reflects § 1501.4(a)(1) of the CEQ rule concerning agency proposals that normally require an environmental impact statement. SCS has stated in these rules, which actions normally require an EIS, and which are exempted from an automatic EIS. Actions along channels where no significant aquatic habitat exists are exempted from an automatic EIS. SCS feels the word "significant" is important in this rule because there are many channels, particularly the dry ephemeral streams in the West, that support a very limited aquatic habitat. In these cases, the environmental evaluation will provide the data to determine whether an EA or an EIS is prepared. The words "or wildlife" after the word "habitat" have been inserted in § 650.7(a)(1).

*Comment 5:* One agency requested that SCS substitute the word "identified" for "major" in the discussion of alternatives (§ 650.7(b)(3)).

*Response:* SCS agrees that the word "major" should be deleted.

*Comment 6:* One agency requested that the phrase "wetlands as well as fish and wildlife habitat" should be inserted after the word "farmlands" in § 650.7(b)(5).

*Response:* We agree and have made this change.

*Comment 7:* One agency disagreed with how scoping was presented in the SCS procedures. They stated that by comparing § 650.9(c) to the flow chart (Figure 1), it appears that scoping occurs immediately before the preparation of a notice of intent. They indicated that better planning would be fostered by including scoping as part of environmental evaluation.

*Response:* We agree that scoping should begin at the start of environmental evaluation. This has been clarified in the procedure § 650.9(c)(1). Formalized scoping, including scoping meetings, will not normally take place until the environmental evaluation indicates that an EIS may be needed. Once the need to prepare an EIS is established, SCS will publish a notice of intent to prepare an EIS.

*Comment 8:* One comment suggested that SCS's Guide for Environmental Assessment be highlighted to point out how environmental evaluation criteria will be used.

*Response:* The SCS Guide for Environmental Assessment describes the relationship between environmental evaluation and planning. The importance of this document has been highlighted in the SCS implementation regulations by describing its function at the beginning of § 650.5.

*Comment 9:* Another comment suggested that public participation be shown on the flow chart.

*Response:* The suggestion was considered, but because public participation occurs throughout planning, it cannot be portrayed at a single position on the flow chart.

*Comment 10:* One comment suggested that § 650.12 explain more clearly how its environmental evaluation process will culminate in a preferred alternative.

*Response:* The wide range of programs and projects administered by SCS results in an equally wide range of criteria that must be considered in each environmental evaluation. These criteria vary according to the problems and objectives of the applicant and the availability of natural resources to solve problems and meet objectives. Criteria include the rules and regulations for compliance with NEPA, and other resource preservation acts. It is not practical to include all such criteria in these rules. We believe that § 650.12, which details steps of program decisionmaking, responds to part 1505 of the CEQ regulations, and that public participation in decisionmaking ensures a wise choice of evaluatory procedures.

*Comment 11:* Another comment suggested that § 650.12 include a description of the content of the record of decision (ROD).

*Response:* The content of the ROD is noted in § 650.12(c) to serve as the public record of decision described in 40 CFR 1505.2. Because these rules are supplemental to the CEQ regulations, it was considered unnecessary to repeat the primary regulation (see 7 CFR 650.1(b)).

*Comment 12:* One comment suggested that draft EIS's should be sent to organizations, groups, and individuals noted in § 650.9(d)(3)(i).

*Response:* The public cited in both subsections is the same. This has been clarified by referring to § 650.9(d)(3)(i) in section 650.13, Review and Comment.

*Comment 13:* One comment suggested that SCS use a "supplement" instead of a "revision" of an EIS and that the rules also should provide for withdrawal of an EIS.

*Response:* SCS uses both terms, "revised" and "supplemented" to clarify the position of the action in the planning process. The term "revised" (§ 650.13(d)) is used in the planning process for actions in which substantial change has occurred. "Supplements" are made to the final EIS if a substantial project change has occurred that significantly affects the quality of the human environment or if it is necessary to clarify a point of concern. Provisions for withdrawal or rescission of an EIS are described in EPA's "Guidelines for Implementing Section 1506.9 of the CEQ Regulations." These guidelines will be distributed throughout SCS when they have been finalized.

*Comment 14:* Another comment suggested that SCS's 30-day public availability period for final EIS's be included in § 650.13(e).

*Response:* The provision for the public availability period is described in § 650.12(c)(3), but a reference to this substitution has been included as § 650.13(e)(3), to clarify the concern.

*Comment 15:* Two individuals suggested that SCS use the term "environmental analysis" instead of "environmental evaluation."

*Response:* For some years SCS has used the term "environmental assessment" (EA) to apply to the part of planning that inventories and estimates the potential effects of alternate solutions to resource problems on the human environment. CEQ has defined EA differently. In the search for a new term SCS decided on "environmental evaluation (EE)." The term "environmental analysis" was considered; however, its acronym would be EA, the same as for environmental assessment. It seems desirable to use the least confusing term.

*Comment 16:* Another comment suggested that the only way an action covered by a program EIS can be shown on the flow chart to need a site-specific EIS is by doing an EA. The comment suggested the flow chart be revised to require an EA at this point.

*Response:* The CEQ regulations, in § 1501.3, indicate that an EA is not always necessary to decide to prepare an EIS. SCS has the option to prepare an EA if appropriate. However, we do not believe this option needs to be shown in Fig. 1.

*Comment 17:* One comment suggested that the environmental assessment should not include any of the information required by § 650.11(b)(3). An appendix to the EIS should include only that information required by CEQ regulations. The last sentence of § 650.11(b)(5)(iii) should be deleted.

*Response:* A resource plan may be developed for an area without preparing an EIS. In the absence of an EIS, the environmental document forming the basis for the Finding of No Significant Impact (FNSI) is an EA and should include all the information necessary to reach a decision. All the information required by § 650.11(3) is needed by SCS to prepare a proper resource plan. The last sentence § 650.11(b)(5)(iii) is in conformance with § 1502.23 of the CEQ regulations.

*Comment 18:* One comment stated that social values cannot be judged to be significant in determining environmental impact.

*Response:* The CEQ regulations, in § 1508.14, indicate that social effects are not intended to be used by themselves to determine environmental impact. However, social values must be considered where they interrelate with other environmental effects on the human environment.

*Comment 19:* Another comment suggested that "or create controversies" be deleted from § 650.7(b)(1) because there was no basis in NEPA or the CEQ rules for considering that the creation of controversy may have a significant effect on the quality of the human environment.

*Response:* We agree and have deleted the phrase, but we should point out that CEQ rules do include considerations for "controversies" in their definition of "significantly."

*Comment 20:* One comment expressed concern over the criteria that will be used to determine if there is "significant" aquatic habitat that would require preparation of EIS for channel realignment. It was recommended that criteria be included to determine "significant" aquatic habitat.

*Response:* The definition of "significantly" verbatim from CEQ rules 40 CFR 1508.27, has been included in § 650.4. This definition will be used by the interdisciplinary team in determining if "significant" aquatic habitat exists. The determination of "no significant aquatic habitat" will not be the only factor used in determining whether an EIS will be prepared. In any event, this decision will be a part of the reviewable record.

*Comment 21:* One comment from a state conservation agency suggested that SCS has exceeded the requirements of complying with the NEPA process as outlined by CEQ in their rules and regulations published in the **Federal Register** on November 29, 1978. As an example they indicate that SCS is making the record of decision (ROD) a part of the environmental documents

and publishing a notice of its availability in the **Federal Register**.

*Response:* SCS has developed its NEPA implementing procedures in consultation with the Council of Environmental Quality as required in § 102(2)(b) of NEPA and § 1507.3(a) of the CEQ-NEPA rules. As part of this consultation, SCS learned that CEQ considers the ROD to be an environmental document. Therefore SCS did not exceed the requirements of the CEQ rules by considering the ROD as an environmental document. SCS may use whatever document it needs to complete its formal record. SCS has used a statement of findings (SOF) to document its decision since 1977 in compliance with its rule of August 1977. The ROD is an extension of the SOF with the name changed to correspond to the uniformity of terminology mandated by 40 CFR 1500-1508.

Similarly, SCS is not exceeding the intent of the CEQ rules if it publishes the notice of availability of the record of decision in the **Federal Register**. SCS consulted with CEQ to clarify the requirement (§ 1506.1) that an agency issues a record of decision. CEQ's intent is that the agency affirmatively make the record of decision available to the public, but leaves it up to the agency to decide how to affirmatively make the record of decision available. SCS has rewritten § 650.12(c) to clarify the timing and notification of both the ROD and the FNSI. Our intent in publishing the notice of availability of the ROD in the **Federal Register** and in local newspapers is to affirmatively call to the public's (§ 1505.2) attention that a decision has been made.

*Comment 22:* One comment stated, "Much of the SCS activity with which the local Conservation Districts are closely concerned is a succession of relatively minor individual actions taken within the limits of defined programs. Most or perhaps all of these activities in turn involve only the offering of technical advice to farmers, local government bodies, and other land occupiers, and to consulting specialists dealing with land and conservation problems—they do not involve SCS in any decisionmaking function, control responsibility, or financial support of the projects involved. There would seem to be no need for SCS filing on these individual projects, as the NEPA requirements, if any, should be met by the parties responsible for the respective projects. Thus, these activities as a whole might be covered by an SCS "Program EIS" applicable nation-wide, perhaps with appropriate subdivisions to identify particular classes of activity."

*Response:* We agree. It is SCS's intent to prepare program EIS's for such activities. The need for preparing program EIS's is addressed in § 650.7(b). We feel that SCS has a responsibility to call attention to legislated environmental constraints to those being provided technical assistance. These constraints such as wetlands, floodplains, and cultural resources will be addressed during the environmental evaluation. In its rules, SCS has included definitions of project and nonproject actions to emphasize that most SCS assistance is technical assistance to nonproject actions largely on nonfederal lands.

*Comment 23:* Another comment stated, that a similar approach might be appropriate where SCS or a conservation district has approval authority, such as the technical features of farm projects for which ASCS grants cost-sharing funds. Obviously the main NEPA filing on this should be by ASCS.

*Response:* Agriculture Stabilization and Conservation Service (ASCS) has a program EIS on the Agricultural Conservation (ACP) cost-sharing program. The NEPA filing referred to involves cost sharing only where ASCS is the lead agency and SCS is a cooperating agency. SCS is the lead agency for the technical assistance portion of the ACP cost sharing program and plans to prepare a program EIS for its technical assistance program. The roles of the lead agency and cooperating agencies are further addressed in § 650.9.

*Comment 24:* One comment indicated that where a project sponsor is required to file an EIS under state environmental policy rules, a Federal agency should not have to duplicate the process.

*Response:* We have revised § 650.10(a) to include adoption of an EIS by another Federal or State agency if it meets the requirements of the CEQ regulations and SCS-NEPA procedures. Further guidance on the Adoption of EIS's is given in 40 CFR 1506.3.

Having considered the comments reviewed and other relevant information, the SCS Administrator concludes that the proposed rules, with changes should be adopted as set forth below. Accordingly Title 7, Chapter VI, Subchapter F, Part 650, Subpart A is hereby amended and will be effective August 29, 1979.

(Catalog of Federal Domestic assistance programs numbered 10.900 through 10.908 National Archive Reference Services)

Dated: August 13, 1979.

R. M. Davis,  
Administrator, Soil Conservation Service.

#### Subpart A—Procedures for SCS-Assisted Programs

- Sec.
- 650.1 Purpose.
  - 650.2 Applicability.
  - 650.3 Policy.
  - 650.4 Definition of terms.
  - 650.5 Environmental evaluation in planning.
  - 650.6 Categorical exclusions.
  - 650.7 When to prepare an EIS.
  - 650.8 When to prepare an environmental assessment (EA).
  - 650.9 NEPA and interagency planning.
  - 650.10 Adoption of an EIS prepared by a cooperating agency.
  - 650.11 Environmental documents.
  - 650.12 SCS decisionmaking.
  - 650.13 Review and comment.

*Authority:* 42 U.S.C. 4321 et seq.; Executive Order 11514 (Rev.); 16 U.S.C. 1001-1008; 7 U.S.C. 1010-1011; 16 U.S.C. 590 a-f, q.; 7 CFR 2.62.

#### Subpart A—Procedures for SCS-Assisted Programs

##### § 650.1 Purpose.

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

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

(c) These procedures provide that—

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

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

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

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

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

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

#### § 650.2 Applicability.

This rule applies to all SCS-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. SCS is to consult with CEQ in the manner prescribed by 40 CFR 1506.11 if it is necessary to take emergency actions.

#### § 650. Policy.

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

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

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

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

(1) Provide assistance to Americans that will motivate them to maintain equilibrium among their ecological, cultural, natural, physical, social, and economic resources by striving for a balance between conserving and

preserving the Nation's natural resource base.

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

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

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

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

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

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

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

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

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

(11) Advocate and assist in the reclamation of abandoned surface-

mined lands and in planning for the extraction of coal and other nonrenewable resources to facilitate restoration of the land to its prior productivity as mining is completed.

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

(13) Advocate the conservation of natural and manmade scenic resources to insure that SCS-assisted programs or activities protect and enhance the visual quality of the landscape.

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

#### § 650.4 Definition of terms.

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

*Categorical exclusion.* (40 CFR 1508.4)

*Cooperating agency.* (40 CFR 1508.5)

*Cumulative impact.* (40 CFR 1508.7)

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

*Human environment.* (40 CFR 1508.14)

*Lead agency.* (40 CFR 1508.16)

*Major Federal action.* (40 CFR 1508.18)

*Mitigation.* (40 CFR 1508.20)

*NEPA process.* (40 CFR 1508.21)

*Scope.* (40 CFR 1508.25)

*Scoping.* (40 CFR 1501.7)

*Tiering.* (40 CFR 1508.28)

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

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

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

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

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

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

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

and a list of agencies and persons consulted.

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

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

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

(f) *Nonproject actions.* Nonprofit actions consist of technical and/or financial assistance provided to an individual, group, or local unit of government by SCS 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, onfarm drainage systems, farm ponds, pasture management,

conservation tillage, critical area stabilization, and other conservation practices.

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

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

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

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

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

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

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

The following should be considered in evaluating intensity:

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

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

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

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

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

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

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

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

(ix) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973 as amended.

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

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

**§ 650.5 Environmental evaluation in planning.**

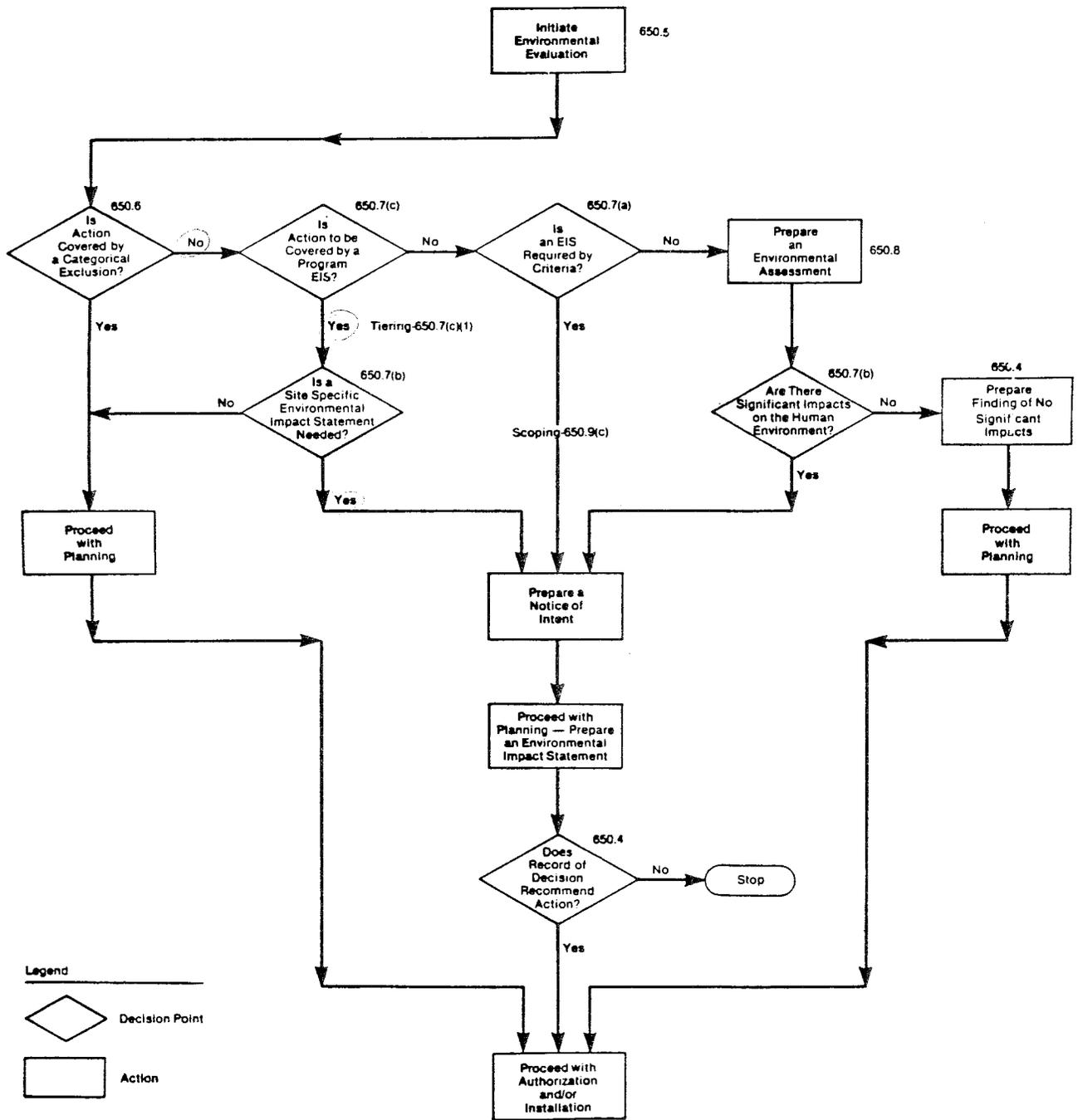
(a) *General.* Environmental evaluation (EE) integrates environmental concerns throughout the planning, installation, and operation of SCS-assisted projects. The EE applies to all assistance provided by SCS, but planning intensity, public involvement, and documentation of actions vary according to the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

- (1) To identify environmental concerns that may be affected, gather baseline data, and predict effects of alternative courses of actions;
- (2) To provide data to applicants for use in establishing objectives commensurate with the scope and complexity of the proposed action;
- (3) To assist in the development of alternative courses of action: (40 CFR 1502.14). In SCS-assisted project actions, nonstructural, water conservation, and other alternatives that are in keeping with the Water Resources Council's Principles and Standards are considered, if appropriate.
- (4) To perform other related investigations and analyses as needed, including economic evaluation, engineering investigations, etc.
- (5) To assist in the development of detailed plans for implementation and operation and maintenance.

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

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### NEPA in SCS Planning



(c) *Decision points.* Figure 1 illustrates the decision points for compliance with NEPA in SCS decisionmaking.

**§ 650.6 Categorical exclusions.**

(a) Some SCS 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 611;
- (2) Snow Survey and Water Supply Forecasts—7 CFR 612;
- (3) Plant Materials for Conservation—7 CFR 613;
- (4) Inventory and Monitoring—Catalog of Federal Domestic Assistance—10.908; and
- (5) River Basin Studies under Section 6 of Pub. L. 83-566 as amended—7 CFR 621.

(b) The environmental evaluation 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.

**§ 650.7 When to prepare an EIS.**

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

(a) *An EIS is required for—*

- (1) Projects that include stream channel realignment or work to modify channel capacity by deepening or widening where significant aquatic or wildlife habitat exists. The EE will determine if the channel supports significant aquatic or wildlife habitat;
- (2) Projects requiring Congressional action;
- (3) Broad Federal assistance programs administered by SCS when the environmental evaluation indicates there may be significant cumulative impacts on the human environment (§ 650.7(e)); and
- (4) Other major Federal actions that are determined after environmental evaluation to affect significantly the quality of the human environment (§ 650.7(b)). If it is difficult to determine whether there is a significant impact on the human environment, it may be necessary to complete the EE and prepare an EA in order to decide if an EIS is required.

(b) The RFO is to determine the need for an EIS for each action, program, or regulation. An environmental evaluation, using a systematic interdisciplinary analysis and

evaluation of data and information responding to the five provisions of Section 102(2)(C) of NEPA, will assist the RFO in deciding if the action requires the preparation of an EIS. In analyzing and evaluating environmental concerns, the RFO will answer the following questions:

(1) *Environmental impact.* Will the proposed action significantly affect the quality of the human environment (40 CFR 1508.14)? For example, will it significantly alter or destroy valuable wetlands, important farmlands, cultural resources, or threatened and endangered species? Will it affect social values, water quality, fish and wildlife habitats, or wilderness and scenic areas?

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

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

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

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

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

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

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

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

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

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

- (a) Land and water resource projects that are not included in § 650.7(a) (1) through (4) for which State and local units of government receive Federal

technical and financial assistance from SCS (7 CFR 620-623; and 640-643); and

(b) Other actions not included in a program EIS nor categorically excluded that the EE reveals may be a major Federal action significantly affecting the quality of the human environment.

**§ 650.9 NEPA and interagency planning.**

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

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

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

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

(b) *Cooperating agencies.* (1) SCS is to request, as appropriate, the assistance of cooperating agencies in preparing the environmental evaluation. This assistance will broaden the expertise in the planning and help to avoid future conflict. SCS 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) SCS is to act as a cooperating agency if requested. SCS may request to be designated as a cooperating agency if proposed actions may affect areas of SCS expertise, such as prime farmlands, soils, erosion control, and agricultural sources of nonpoint pollution. SCS, as a cooperating agency, is to comply with the requirements of 40 CFR 1501.6(b) to the extent possible depending on funds, personnel, and priority. If insufficient funds or other resources prevent SCS from participating fully as a cooperating agency, SCS is to request the lead agency to provide funds or other resources which will allow full participation.

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

(1) SCS is to use scoping to identify and categorize significant environmental

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

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

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

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

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

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

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

(2) *Early public involvement.* The public is to be invited and encouraged to participate in the early stages of planning, including the consideration of the potential effects of SCS-assisted

actions on significant environmental resources such as wetlands, flood plains, cultural values, endangered species, important farmland.

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

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

(ii) *Public notices.* (40 CFR 1506.6) If the effects of an action are primarily of local concern, notice of each public meeting or hearing should be: Submitted to State and areawide clearinghouses pursuant to OMB Circular A-95 (revised); submitted to Indian tribes if they are interested; published in local newspapers; distributed through other local media; provided to potentially interested community organizations including small business associations; published in newsletters that may be expected to reach potentially interested persons; mailed directly to owners and occupants of nearby or affected property; and posted onsite and offsite in the area where the action is to be located.

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

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

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

(4) *Nonproject activities.* Public participation in the planning and application of conservation practices with individual land users is accomplished primarily through conservation districts. These districts

are governed by boards of supervisors, directors, commissioners, etc., who are elected and/or appointed to insure that soil, water, related resources, and environmental qualities in the district are maintained and improved. The public is to be encouraged to participate in the development of long-range district programs and district annual plans. The district keeps the public informed through public meetings, district newsletters, news stories, radio and television programs, and annual reports.

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

(40 CFR 1506.3)

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

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

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

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

#### § 650.11 Environmental documents.

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

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

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

(1) To reduce duplication, SCS may combine environmental documents with other planning documents of the same proposal, as appropriate. For example, SCS, in consultation with CEQ and the office of the Secretary of Agriculture has determined that each EIS is to satisfy the requirements for a regulatory impact analysis as required by Executive Order 12044. This may

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

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

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

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

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

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

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

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

(4) *Letters of comment and responses.* (40 CFR 1503.4, 1502.9(b)) Letters of comment that were received and the responses to these comments are to be appended to the final EIS. Opposing views and other substantive comments that were not adequately discussed in the draft EIS are to be incorporated in the final EIS.

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

(i) Meet the requirements of 40 CFR 1502.18;

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

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

#### § 650.12 SCS decisionmaking.

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

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

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

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

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

(b) *Decision points in SCS-assisted projects.* SCS 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. SCS provides technical and financial assistance for projects under the Watershed Protection and Flood Prevention and the Resource Conservation and Development (RC&D) programs. These usually require the preparation of project EA's or EIS's. The major decisionmaking points and their relation to NEPA compliance are as follows:

(1) For Watershed Protection and Flood Prevention projects:

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

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

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

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

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

(2) For RC&D measure plans:

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

(ii) 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 SCS for planning assistance for measures considered in the preliminary report.

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

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

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

(c) *Record of decision.* (1) *EIS's.* The RFO is to prepare a concise record of decision (ROD) for actions requiring an EIS. The record of decision is to be prepared and signed by the RFO following the 30-day administrative action period initiated by the EPA's publication of the notice of availability of the final EIS in the **Federal Register**. It is to serve as the public record of decision as described in 40 CFR 1505.2 of the CEQ regulations. The ROD is to

be distributed to all who provided substantive comments on the draft EIS and all others who request it. A notice of availability of the ROD will be published in the **Federal Register** and local newspaper(s) serving the project area. The RFO may choose to publish the entire ROD.

(2) *Environmental Assessments (EA)*. If the EA indicates that the proposed action is not a major Federal action significantly affecting the quality of the human environment, the RFO is to prepare a finding of no significant impact (FNSI).

(3) *Distribution and publication of the FNSI (§ 1506.6(b))*. The RFO is to distribute the FNSI to interested agencies and individuals. Notice of its availability is to be published in the **Federal Register** and in one or more newspapers serving the area of the proposed action. Single copy requests for the document are to be filled without charge. A charge may be made for multiple copies. Implementing action is not to be initiated for 30 days after the notice of availability of the FNSI has been published in the **Federal Register**.

(d) *Changes in actions*. When it appears that a project or other action needs to be changed, the RFO will perform an environmental evaluation of the authorized action before making a change.

#### § 650.13 Review and comment.

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

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

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

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

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

requested. A charge may be made for multiple copy requests.

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

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

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

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

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

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

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

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

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

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

## DEPARTMENT OF AGRICULTURE

### Soil Conservation Service

#### 7 CFR Part 650

#### Compliance With NEPA; Related Environmental Concerns

**AGENCY:** U.S. Department of Agriculture, Soil Conservation Service (SCS).

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes the policy and general guidelines for SCS implementation of Executive Order 11988, Floodplain Management, dated May 24, 1977, in Federal assistance programs administered by SCS. It describes the policy and general constraints placed on SCS personnel relating to flood-plain management in assistance programs administered by SCS. This rule is in accordance with the U.S. Department of Agriculture Secretary's Memorandum No. 1827, Revised, Supplement No. 1, Implementation of Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

**EFFECTIVE DATE:** July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Gary A. Margheim, Acting Director, Environmental Services Division, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, telephone 202-447-3839.

**SUPPLEMENTARY INFORMATION:** On June 2, 1978, SCS published in the Federal Register (43 FR 24223) its proposed policy and general guidelines for implementation of Executive Order 11988, Floodplain Management, Title 7, Chapter VI, Part 650, Subpart B, Related Environmental Concerns, § 650.25, Floodplain Management.

Written comments were received from four Federal agencies and three

environmental organizations. The comments were given full consideration in developing the final rules. The full text of all comments on the proposed rules is available for public inspection in Room 6105, South Agriculture Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C.

SCS has prepared these rules in consultation with the Water Resources Council (WRC), the Department of Housing and Urban Development's Federal Insurance Administration (FIA), and the Council on Environmental Quality (CEQ), in accordance with Section 2(d) of Executive Order 11988.

Most suggestions for clarification and editing were accepted. The more substantive comments and their consideration are summarized as follows:

*Comment 1:* Several agencies expressed concern that the proposed SCS rules do not take advantage of SCS's unique experience in flood-plain management. They had hoped that SCS's rules might be a point of reference or model for agencies with less experience in this area. In addition, the commenting agencies indicated that the proposed rules do not adequately and specifically tailor the Order to SCS's Federal assistance programs, nor do they clarify how the Order applies to the full range of SCS-assisted actions. Concern was expressed that the proposed rules do not adequately address the Order's requirements for actions involving Federal technical assistance programs.

*Response:* Because of the unique nature of SCS's programs, we do not believe that our rules would serve as an appropriate model for use by other agencies; but because of the unique nature of SCS assistance, we do believe that other agencies might benefit from our experience in encouraging flood-plain management.

SCS has had a long and unique experience in flood-plain management in a wide array of Federal assistance programs. In 1970, SCS initiated a program in cooperation with the responsible State agency to carry out requested technical flood hazard studies for local governments. SCS provides followup assistance to help the local government incorporate the technical findings into their flood-plain

regulations. SCS also carries out flood insurance studies for FIA on a reimbursable basis. Providing flood hazard data and interpretations for flood-plain management in flood-prone areas are continuing parts of environmental evaluation in SCS's project programs.

The unique nature of SCS's assistance is that the programs are entirely voluntary and involve primarily nonfederal land. SCS has no authority to regulate land use. It cannot require a land user to use his or her land in a particular manner or refrain from converting it to other uses, including development, or to restore or preserve natural values served by the flood plain. SCS exercises leadership in achieving sound flood-plain management by advising, counseling, and encouraging land users to voluntarily install needed conservation practices and use their land, including flood plains, wisely. SCS has been successful in carrying out its assistance programs for more than 40 years.

SCS believes that the proposed rules adequately tailor the requirements of the Order to its various programs by generally describing how the Order will be implemented in SCS's nonproject programs and how environmental evaluation in project programs integrates flood-plain management considerations into SCS's National Environmental Policy Act (NEPA) process. These rules have been added to SCS's NEPA rules by adopting a new section under Part 650, Subpart B, "Related Environmental Concerns." The more specific details of SCS's procedures for integrating flood-plain management into the NEPA process are being incorporated in SCS handbooks, manuals, and other internal memoranda. These rules are designed to apply to the full range of actions in the programs administered by this agency.

Because all programs administered by SCS are Federal assistance programs, the rules are specifically designed to address the Order's requirements for these types of programs that involve local sponsoring organizations or applicants (land users). Every type of direct or indirect action by SCS requires interaction with local, State, or Federal agencies and interdisciplinary planning. This planning assistance is provided only as requested. The environmental

evaluation is an inseparable part of the planning process (§ 650.3(a) of this Part). The environmental evaluation may be quite short if an SCS technician helps an individual land user solve a land or water resource problem. On the other hand, the environmental evaluation may be extensive, complex, and time consuming when an interdisciplinary planning staff helps a local sponsoring organization develop a coordinated watershed plan. The scope of the environmental evaluation and its documentation is in proportion to the scope of the task. Where flood plains will be affected by SCS-assisted actions, flood-plain management is considered in the evaluation, as are other significant environmental resources and values.

*Comment 2:* Three agencies expressed concern that SCS's proposed rules rely too heavily on SCS's existing NEPA process. They state that the Order imposes five specific and unique substantive procedural differences between NEPA and the Order.

(1) *Agency procedures.* They state that the Order requires specification of substantive procedures to avoid adverse effects and to support flood-plain development, but most agency procedures generally focus only on the preparation of environmental impact statements;

(2) *Mitigation.* They state the NEPA process requires avoidance and reduction of environmental damage in general terms, but the Order establishes specific standards to achieve such goals;

(3) *Alternatives.* They state that NEPA requires the development of alternatives that are environmentally sound. The Order requires the identification specifically to avoid incompatible development and to restore and preserve the natural and beneficial values served by flood plains;

(4) *Scope.* They state that the NEPA scope is very broad but that EIS's are required only for major Federal actions. However, the Order applies to all actions having adverse effects on or that directly or indirectly support development of the flood plain;

(5) *Public notice.* They state that NEPA's final EIS is a predecision document. The Order's public notice is a post decision document.

*Response:* We do not agree that there are procedural differences in implementing NEPA and the Order. SCS will use the NEPA process (i.e. environmental evaluation and an EIS where needed) for integrating flood-plain management into all stages of agency planning and decisionmaking. There is no reason why the requirements and responsibilities that

need to be specified in flood-plain procedures cannot be explicitly linked to and carried out through the NEPA process. SCS rules, procedures, handbooks, manuals, and other internal memoranda are being modified to address NEPA and flood-plain management in all programs and do not focus only on EIS's.

*Comment 3:* The concern was expressed that SCS's proposed rules do not provide an explicit decisionmaking process on which to base the development of more detailed handbooks and internal documents for carrying out SCS-assisted actions.

*Response:* We agree with this comment. The final rules have been modified to provide a more explicit policy statement on the decisionmaking process. This policy is the basis for the development of SCS handbooks, manuals, and internal memoranda. Although the recommended decisionmaking process is not duplicated in SCS's flood-plain management rule, decisionmaking with SCS assistance begins at the earliest contact with a land user and continues throughout the planning process.

It should be emphasized that the eight-step decisionmaking process in the WRC Guidelines, the six NEPA policy statements, and the six steps in the WRC's Principles and Standards are all encompassed in SCS guidelines for decisionmaking but are not specifically repeated in this rule, because the procedures as written encompass all the concerns in a single uniform approach for the agency.

*Comment 4:* Several comments questioned SCS's proposed rule as it relates to Federal land under SCS control.

*Response:* Because SCS owns or controls only some 30 relatively small properties and the vast majority of SCS assistance is provided to users of nonfederal land, SCS flood-plain management rules concerning such Federal lands are brief. The properties owned or controlled by SCS are not used by the public.

*Comment 5:* Several comments questioned the exclusion of certain nonproject SCS assistance from the public notice requirement (Section 2(a)(2)(ii) of the Order).

*Response:* Section 650.25(a)(1) has been reworded to emphasize the nature of the technical and financial assistance programs SCS administers. Because SCS receives an extremely large number of requests from land users for nonproject assistance and because of the policy restrictions on SCS personnel where flood-plain management is concerned,

the SCS Administrator has determined that public notice before every such action is not feasible. SCS assistance to land users in nonproject actions is normally through cooperative agreements with local conservation districts. Conservation districts have long-range plans and goals that are periodically updated in consultation with the public. Therefore, flood-plain management is an integral part of the conservation program for the district and provides for public participation in actions involving agricultural land use and development in flood plains.

It has been determined by Victor H. Barry, Jr., Deputy Administrator for Programs, SCS, that the following rules will bring Soil Conservation Service-assisted programs into full compliance with Executive Order 11988, Floodplain Management. Therefore, an impact analysis in accordance with Executive Order (EO) 12044 and U.S. Department of Agriculture Secretary's Memorandum 1955, is not necessary. Subsequent program decisions affected by these rules will be subject to EO 12044 and Secretary's Memorandum 1955.

(7 CFR 2.62; Executive Order 11988.)

Dated: July 18, 1979.

R. M. Davis,

Administrator, Soil Conservation Service.

A new Section 650.25 is added to Subpart B, "Related Environmental Concerns" as follows:

**§ 650.25 Flood-plain management.**

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

(a) *Policy.* (1) *General.* SCS provides leadership and takes action, where practicable, to conserve, preserve, and restore existing natural and beneficial values in base (100-year) flood plains as part of technical and financial assistance in the programs it administers. In addition, 500-year flood plains are taken into account where there are "critical actions" such as schools, hospitals, nursing homes,

utilities, and facilities producing or storing volatile, toxic, or water-reactive materials.

(2) *Technical assistance.* SCS provides leadership, through consultation and advice to conservation districts and land users, in the wise use, conservation, and preservation of all land, including flood plains. Handbooks, manuals, and internal memoranda set forth specific planning criteria for addressing flood-plain management in SCS-assisted programs. The general procedures and guidelines in this part comply with Executive Order (E.O.) 11988, Floodplain Management, dated May 24, 1977, and are consistent with the Water Resources Council's Unified National Program for Floodplain Management.

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

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

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

(4) *Nonproject technical and financial assistance programs.* The SCS Administrator has determined that SCS 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 SCS determines that there are practicable alternatives outside the base flood plain. SCS 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. SCS will carefully evaluate the potential extent of the adverse effects and any increased flood risk.

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

will include alternatives to avoid adverse effects and incompatible development in base flood plains. Public participation in planning is described in § 650.6 of this part and will comply with Section 2(a)(4) of E.O. 11988. Flood-plain management requires the integration of these concerns into SCS's National Environmental Policy Act (NEPA) process for project assistance programs as described in Section 650 of this part.

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

(b) *Responsibility.* SCS 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. SCS does not have authority to make land use decisions on nonfederal land. SCS provides the land user with technical flood hazard data and information on flood-plain natural values. SCS informs the land user how alternative land use decisions may affect the aquatic and terrestrial ecosystems, human safety, property, and public welfare. Alternatives to flood-plain occupancy, modification, and development are discussed onsite with the land user by SCS.

(1) *SCS National Office.* (§ 600.2 of this part). The SCS Administrator, state conservationist, and district conservationist are the responsible Federal officials in SCS for

implementing the policies expressed in these rules. Any deviation from these rules must be approved by the Administrator. The Deputy Administrator for Programs has authority to oversee the application of policy in SCS programs. Oversight assistance to state conservationists for flood-plain management will be provided by the SCS technical service centers (§ 600.3 of this part).

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

(3) *SCS field offices.* The district conservationist (§ 600.6 of this part) is delegated the responsibility for providing technical assistance and approving financial assistance to land users in nonproject actions, where applicable, and for deciding what constitutes an adverse effect or incompatible development of a base flood plain. This assistance will be based on official SCS policy, rules, guidelines, and procedures in SCS handbooks, manuals, memoranda, etc. For SCS-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.

1988, Floodplain Management, dated May 24, 1977.

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

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

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

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

(iv) If the district conservationist determines that the land user's proposed action is within the base flood plain and would likely result in adverse effects, incompatible development, or an increased flood hazard, it is the responsibility of the district conservationist to determine and point out to the land user alternative methods of achieving the objective, as well as alternative locations outside the base flood plain. If the alternative locations are determined to be impractical, the district conservationist will decide whether to continue providing assistance. If the decision is to terminate assistance for the proposed action, the land user and the local conservation district, if one exists, will be notified in writing about the decision.

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

notice explaining why the action is proposed to be located in the base flood plain.

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

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

(iii) SCS's NEPA process (Part 650 of this chapter) is used to integrate the spirit and intent of E.O. 11988 Sections 2(a) and 2(c) into agency planning and recommendations for land and water use decisions by local sponsoring organizations and land users.

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

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

(vi) SCS may require the local government to adopt and enforce

appropriate flood plain regulations as a condition to receiving project financial assistance.

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

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

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

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

[FR Doc. 79-22919 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-16-M

## 7 CFR Part 650

### Support Activities; Compliance With NEPA

**AGENCY:** U.S. Department of Agriculture, Soil Conservation Service (SCS).

**ACTION:** Final rule.

**SUMMARY:** These rules codify SCS policy for compliance with Executive Order 11990, Protection of Wetlands, in SCS-assisted programs. They describe the policy and general constraints on SCS personnel relating to the protection of wetlands in assistance programs administered by SCS. These rules are in accordance with the U.S. Department of Agriculture Secretary's Memorandum No. 1827, Revised, Supplement No. 1, Implementation of Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

**EFFECTIVE DATE:** July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Gary Margheim, Acting Director, Environmental Services Division, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, telephone 202-447-3839.

**SUPPLEMENTARY INFORMATION:** On May 24, 1977, the President issued a comprehensive environmental message that included Executive Order (E.O.) 11990.

On June 30, 1978, SCS published in the Federal Register the proposed rules and general guidelines for implementation of E.O. 11990, Protection of Wetlands, Title 7, Chapter VI, Part 650, Subpart B,

Related Environmental Concerns,  
§ 650.26, Protection of Wetlands.

Written comments were received from two Federal agencies, four State agencies or institutions, two private organizations, and one representative to a State legislature. The comments were given full consideration in developing the final rules. The full text of all comments received on the proposed rules is available for public inspection in Room 6105, South Agriculture Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, D.C.

The following is a summary of substantive comments received and their consideration:

*Comment 1:* Several comments suggested editorial changes to § 650.26(a), Scope. Others suggested removing this section, changing it to a preamble, or making it a more accurate assessment or wetland values. One person expressed the view that the section overly favored wetland protection, but another suggested that it strongly endorsed wetland drainage. One comment also suggested that definitions be added to the proposed rules.

*Response:* SCS agrees that § 650.26(a) "Scope," is a discussion of wetlands and their values. It is intended to present a range of values and concerns about wetlands that are affected by SCS-assisted programs. The title of § 650.26(a) has been changed to "Background."

The intent of this section is not to make judgments but only to identify factors to be considered in decisionmaking. Editorial changes have been made for clarity throughout the rules. New construction and wetlands are defined in E.O. 11990. The words "substantially irrevocable" in § 650.26(b) Applicability, have been deleted and replaced with "wetlands previously converted to other uses." In § 650.21(c)(2)(v) the phrase "that are not irrevocably committed to other uses" was deleted. In § 650.26(c)(2)(ii) the phrase "in nonproject type areas" was changed to "nonproject assistance (assistance to individuals)".

*Comment 2:* One comment was received to the effect that the wetland management policies in the proposed rules were inconsistent with the requirements for protection of wetlands in the Executive Order.

*Response:* SCS believes that management of wetlands is consistent with Executive Order 11990. Wetlands management is designed to minimize the destruction, loss, or degradation of wetlands and assist in preservation and

enhancement of their natural and beneficial values as stated in the Executive Order.

*Comment 3:* Several comments suggested that SCS is severely limiting its technical assistance because of the proposed rules and expressed a desire for them to be more flexible. They objected to limitations of Federal assistance in Minnesota, South Dakota, and North Dakota. The comments suggested that these States are being discriminated against in application of Federal assistance and stated that Federal assistance without limitations is available in other States and, therefore, should be available in Minnesota, North Dakota, and South Dakota.

*Response:* SCS does not believe the Executive Order permits such flexibility. It directs SCS to take positive action to promote protection of wetlands. Pub. L. 87-732 constrains Federal assistance with drainage in the States of North Dakota, South Dakota, and Minnesota. SCS rules must conform to the mandates of this law. The proposed rules treat assistance in these States, as in other States, with the exception of the constraints mandated by The Soil Conservation and Domestic Allotment Act, Pub. L. 87-732, 16, U.S.C. 590, p 1, October 2, 1962.

*Comment 4:* One comment requested that SCS prepare a regulatory analysis so that people could consider effects of the proposed rules and alternative approaches early in the decisionmaking process.

*Response:* In accordance with the criteria established by USDA for compliance with E.O. 12044, it has been determined that a regulatory impact analysis is not necessary for these rules. This was stated in the Supplementary Information section of the proposed rules published in the *Federal Register* on June 30, 1978.

*Comment 5:* Another comment questioned whether the procedures for consideration of alternatives provided by § 650.26(c)(1) were sufficiently broad or rigorous to implement Executive Order 11990(2)(a)(2).

*Response:* Section 650.26(c)(1) incorporates the planning criteria set forth by Section 5 of E.O. 11990 into the comprehensive environmental assessment procedures used by SCS pursuant to 7 CFR Part 650. SCS believes that this incorporation will ensure implementation of the Executive Order's policies through a unified planning process.

*Comment 6:* Another comment challenged the statement in § 650.26(c)(2)(ii) that assistance should not be provided for altering wetlands to

enable them to be used for agriculture or other uses, because it implied that activities such as drainage might be approved if conversion to other uses were not the objective. It was requested that the phrase be deleted so that it would not be misconstrued.

*Response:* This section has been reworded for clarity. If wetlands are not to be drained or otherwise modified, they will continue to function as wetlands. The purpose of the phrase is to indicate that technical assistance to land users is given for the purpose of managing wetlands.

*Comment 7:* Three comments objected to SCS providing technical assistance that would alter wetlands types 1 and 2. Those comments indicated that SCS had violated the Order by establishing certain exceptions to the Order.

*Response:* For clarity, a reference to the SCS environmental evaluation has been added to § 650.26(c)(2)(i) to emphasize that assistance will be provided only in accordance with the Executive Order. Executive Order 11990 (Section 2(a)) requires that each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction and (2) that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. Section 5 of the Executive Order specifies the factors to be considered. The SCS environmental evaluation provides for consideration of these factors. Wetlands types 1 and 2, as defined in "Wetlands of the United States," USDI, Fish and Wildlife Service Circular-39, 1956, have a high economic and social potential for farmland as well as high value to wildlife. SCS took this into consideration in preparing § 650.26(c)(2)(iii).

*Comment 8:* Two comments suggested that the exceptions in § 650.26(c)(3) constitute a blanket exception in violation of the Executive Order.

*Response:* SCS does not agree. This section delineates the limited area for consideration of exceptions, which is in connection with water quality control and water conservation. The criteria for such exceptions are taken from the Executive Order. SCS believes that its environmental evaluation process referred to in § 650.26(c)(1) includes the specific criteria needed to guide the granting of exceptions. The purpose of

§ 650.26(c)(3) is to alert the public that some wetlands may be lost by installing salinity control and water conservation measures and that exceptions to the procedures may be granted as specified in the Executive Order.

*Comment 9:* A comment was made on § 650.26(c)(4) to the effect that the proposed rule was in error in citing 7 CFR 650.6 as the source of review procedures: the correct section was cited as 7 CFR 650.7, "Public involvement and coordination." The comment went on to say that the section was in many ways inadequate with respect to provision for public involvement.

*Response:* The citation in the comment is incorrect because the August 8, 1978, revision of CFR Part 650, Subpart A, entitled Compliance With NEPA, is section 7 CFR 650.6, "Public Involvement During Environmental Assessment."

SCS's Guide for Environmental Assessment, program handbooks and manuals, and internal memoranda clearly direct SCS planners to involve the public in its project planning and decisionmaking. SCS believes that these guidelines, together with the previously cited codified rules, 7 CFR 650.6 provide adequate compliance with Section 2(b) of the Order.

*Comment 10:* Two comments requested that mitigation, as mentioned in § 650.26(c)(2)(iv), not be considered a reasonable substitute for unavoidable wetland alteration and that decisions should be coordinated with the U.S. Fish and Wildlife Service and the State in which the action is to occur.

*Response:* Section 650.26(c)(2)(iii) refers to unavoidable losses caused by construction primarily for purposes other than the drainage of wetlands. In granting the exceptions in (c)(2), the state conservationist will contact the State fish and wildlife agency as well as the U.S. Fish and Wildlife Service. The SCS environmental evaluation process provides for this.

*Comment 11:* One comment expressed the view that present policies ignore the effect of wetlands types 1, 2, and 3 on adjacent agricultural lands. The comment said that, in one county in a particular State, about 10 percent of the agricultural land had become partially nonproductive because of the high lime content of the soil around and between wetlands. The comment suggested that the only practical solution is "elimination of the cause—remove wetlands."

*Response:* This high-lime content is a natural soil condition often associated with wetland areas having a source of

calcium carbonate. The drainage of adjacent wetland areas would not reduce the lime content. Even if it would, the Executive Order directs agencies to protect wetlands, and these rules are written to provide that protection.

*Comment 12:* One comment requested that an environmental impact statement (EIS) as required by the National Environmental Policy Act be prepared before any decision is made on the proposed rules and procedures to implement E.O. 11990.

*Response:* SCS believes that the procedures set forth in the proposed rules are not a major Federal action. They are elements of a decisionmaking process that incorporates specific environmental concerns into overall interdisciplinary planning. Therefore, it has been determined that an EIS is not necessary.

*Comment 13:* One comment objected to exclusion from these rules of all projects where SCS commitments were made before May 5, 1975 (§ 650.26(b)(2)).

*Response:* SCS agrees with this comment. The rules have been modified to include applicable dates as specified in the Executive Order.

It has been determined by Victor H. Barry, Jr., Deputy Administrator for Programs, SCS, that the following rules will bring Soil Conservation Service-assisted programs into full compliance with Executive Order 11990, Protection of Wetlands. Therefore, an impact analysis in accordance with Executive Order (E.O.) 12044 and U.S. Department of Agriculture Secretary's Memorandum 1955, is not necessary. Subsequent program decisions affected by these rules will be subject to E.O. 12044 and Secretary's Memorandum 1955.

(7 CFR 2.62; Executive Order 11990.)

Dated: July 18, 1979.

R. M. Davis,

Administrator, Soil Conservation Service.

A new § 650.26 is added to Subpart B, Related Environmental Concerns, as follows:

**§ 650.26 Protection of wetlands.**

(a) *Background.* (1) Because of the fragile nature of wetlands, human activity can and often does inflict lasting change on them, sometimes seriously altering their natural functions. Millions of acres of the Nation's original wetlands have been impaired or converted to other uses. Extraordinary care and effort are required to protect the remaining aquatic ecosystems.

(2) Wetlands moderate extremes in waterflow and have value as natural flood-control mechanisms. They aid in

water purification by trapping, filtering, and storing sediment and other pollutants and by recycling nutrients. Many serve as ground-water recharge areas. All function as nursery areas for numerous aquatic animal species and are critical habitat for a wide variety of plant and animal species. Wetlands produce economically important crops of fur, fish, wildlife, timber, wild rice, wild hay, wild cranberries, and other products. Many wetlands produce revenues through fees for hunting, fishing, and trapping privileges.

(3) The plants that grow in tidal marshes and estuaries produce the nutrients required to sustain high yields of aquatic life. Tidal and wind currents redistribute the nutrients and sediments throughout the aquatic areas, thereby helping to maintain the habitat for all creatures using these areas. Tidal marshes and estuaries are a primary base for many commercial and sport fisheries. Many saltwater finfish and shellfish spend some phase of their lives in such areas.

(4) Wetlands support adjacent or downstream aquatic ecosystems. Bordering marshes, for example, provide the spawning areas required by northern pike to maintain their populations in associated streams, rivers, lakes, and reservoirs.

(5) Various kinds and degrees of management may be required to ensure desired stages of productivity of existing wetlands. Management involves manipulation of plant species and densities through measures such as water depth control, burning, grazing, and mowing. Offsite measures often are essential to control wind and water erosion, to minimize sedimentation, to maintain optimum salinity, and to divert pollutants.

(6) Many wetlands have a potential for conversion to cropland for the production of food and fiber. It is important to balance the Nation's need for productive farmlands with long-term needs for protection of environmental resources for the enjoyment and well-being of future generations. The resource inventory, interpretation, and planning assistance provided by SCS are of value in achieving this balance.

(b) *Applicability.* This policy applies to SCS technical and financial assistance that will result in new construction in wetlands types 1 through 20 as described in Circular 39 of the U.S. Department of the Interior, Fish and Wildlife Service, published in 1956 and republished in 1971. These rules do not apply to lands artificially diked and flooded to produce commercial crops of domestic rice, wild rice, or cranberries,

or to wetlands previously converted to other uses. These rules do not apply to projects or actions now under construction or to projects for which all funds have been appropriated through fiscal year 1979 or to projects or programs for which a draft or final environmental impact statement was filed before October 1, 1977.

(c) *Policy.* (1) *Environmental evaluation.* SCS uses an environmental evaluation (§ 650.4 of this part), which is initiated in the early stages of planning, to identify the effects of proposed actions that may occur in wetlands. The environmental evaluation identifies and evaluates practicable alternatives to avoid action that may destroy or degrade wetlands. The environmental evaluation also identifies actions that may preserve and enhance natural and beneficial values of wetlands. In compliance with Section 5 of E.O. 11990, the following factors are considered in the environmental evaluation:

(i) Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards; and sedimentation and erosion.

(ii) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources.

(iii) Other uses of wetlands in the public interest, including recreation and scientific and cultural uses.

(2) *Compliance with sections 1(a) and 2(a) of E.O. 11990.* It is the general policy of SCS to aid in protecting, maintaining, managing, and restoring wetlands to ensure the continued realization of their beneficial values. Within this general policy and on the basis of an environmental evaluation, the following specific policies apply:

(i) *All SCS-assisted activities.* (A) SCS may provide technical and financial assistance to alter wetlands types 1 and 2, including conversion to cropland, pastureland, or other uses, only under the following very limited circumstances. The decision to provide technical assistance must be based on an environmental evaluation that indicates that the land has been cultivated to produce food, feed, fiber, and/or oilseed for at least 3 or the 5 years before the request for assistance and that there is no practicable alternative. Assistance in Minnesota, South Dakota, and North Dakota is to be given in accordance with item (ii)(C). SCS will encourage the preservation of wetlands types 1 and 2 that are adjacent to wetlands types 3 through 20 and are

needed to maintain a balanced aquatic or semiaquatic ecosystem. If a land user decides to alter types 1 and 2 or to convert them to other uses, SCS will encourage the application of conservation land treatment measures needed to reduce erosion and sedimentation and protect environmental values. SCS also will encourage decisions to preserve key areas and, where possible, to include enhancement measures on such areas.

(B) SCS will assist in restoring damaged wetlands and in establishing wetland habitat where appropriate.

(C) SCS will encourage land users and project sponsors to consider and use the programs of other Federal, State, and local agencies and private organizations that may help to preserve wetlands.

(ii) *Nonproject assistance (assistance to individuals).* (A) SCS will not provide technical and financial assistance for draining or otherwise altering wetlands types 3 through 20 to convert them to other uses.

(B) If wetlands types 3 through 20 would be drained or otherwise altered because of structural measures designed for other purposes, landowners will be advised of alternative ways to avoid or mitigate the incidental loss of these wetlands. Assistance will be provided only if one of the alternatives is selected for installation.

(C) In addition, in the States of Minnesota, North Dakota, and South Dakota, SCS will limit technical and financial assistance for draining or otherwise altering wetlands types 1 and 2 in order to convert them to other uses in accordance with provisions of Section 16 A of Pub. L. 87-732 as follows:

**Soil Conservation and Domestic Allotment Act; Pub. L. 87-732, 16 U.S.C. 590 P-1, October 2, 1962**

Sec. 16A. The Secretary of Agriculture shall not enter into an agreement in the States of North Dakota, South Dakota, and Minnesota to provide financial or technical assistance for wetland drainage on a farm under authority of this Act if the Secretary of the Interior has made a finding that wildlife preservation of such land in its undrained status will materially contribute to wildlife preservation and such finding, identifying specifically the farm and the land on that farm with respect to which the finding was made, has been filed with the Secretary of Agriculture within 90 days after the filing of the application for drainage assistance: Provided, That the limitation against furnishing such financial and technical assistance shall terminate (1) at such time as the Secretary of the Interior notifies the Secretary of Agriculture that such limitations should not be applicable, (2) one year after the date on which the adverse finding of the Secretary of the Interior was filed unless during that time an offer has been made by the Secretary of the Interior or a

State Government agency to lease or to purchase the wetland area from the owner thereof as a waterfowl resource, or (3) five years after the date on which such adverse finding was filed if such an offer to lease or to purchase such wetland area has not been accepted by the owner thereof: Provided further, That upon any change in the ownership of the land with respect to which such adverse finding was filed, the eligibility of such land for such financial or technical assistance shall be redetermined in accordance with the provisions of this section.

(iii) *Project assistance (watersheds and RC&D).* SCS will not provide assistance in project actions, such as watershed projects or Resource Conservation and Development (RC&D) areas, that include features designed for the purpose of draining or otherwise altering wetlands types 3 through 20 to convert them to other uses. If these projects include features for other purposes that unavoidably result in losses to types 3 through 20 wetlands, the loss is to be mitigated by establishing wetland habitat values in the same vicinity that are equivalent, insofar as possible, to the wetland habitat values lost. Provisions are to be made for managing these established wetlands in a way to ensure that the habitat values provided are equal to those lost, insofar as possible. Sponsors, conservation organizations, State fish and wildlife agencies, or others can assume these management responsibilities.

(3) *Exceptions.* (i) For project activities, the SCS Administrator may grant exceptions on a case-by-case basis if necessary to meet identified irrigation water management, water quality, and water conservation objectives.

(ii) For nonproject activities, state conservationists may grant exceptions on a farm-by-farm basis if irrigation water management, water quality, and water conservation objectives conflict with wetland protection. SCS will evaluate economic, environmental, and other pertinent factors in such proposed actions.

(4) *Early public review.* SCS will provide an opportunity for early public review of any plans or proposals for new construction in wetlands, as described in § 650.9(d) of this part.

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