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TITLE 4XX – TECHNICAL SERVICE PROVIDER ASSISTANCE

Part 4XX – Technical Service Provider Assistance

Subpart A – Purpose, Authorities, and Exclusions

4XX.0 Purpose.

Through this directive, the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) establishes national policy for the use of Technical Service Providers.

4XX.1 Authorities.

- A. Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, Public Law 107–171, May 13, 2002 (referred to as the 2002 Farm Bill).
- B. Section 1242 of the Food Security Act of 1985, as amended by the 2002 Farm Bill, specifically provides for delivering technical assistance to a producer directly or through a payment for an approved third party, if available. It also calls for:
 - (1) Establishing a system for approving individuals and entities to provide technical assistance, establishing criteria for the evaluation of providers or potential providers of technical assistance and establishing the amounts and methods for payments for that assistance; and
 - (2) Providing for entering into cooperative agreements or contracts with non-Federal entities to assist in providing technical assistance necessary to develop and implement conservation programs.

4XX.2 Exclusions.

The adjusted gross income limit contained in the 2002 Farm Bill is not applicable to services provided by Technical Service Providers.

Subpart B – Program Delivery

4XX.10 Equal Access

- A. All individuals have equal access to USDA conservation programs, services, and available Technical Service Provider assistance including Socially Disadvantaged Producers, Beginning Farmers and Ranchers, Limited Resource Farmers, and Historically Underserved Groups and Individuals. This includes opportunities to be certified and to provide technical services as a Technical Service Provider.
- B. All technical services provided will be in compliance with all Civil Rights legislation and other directives, non-discrimination statutes, and related USDA regulations.

4XX.11 American Indian Tribes

- A. NRCS has a “Trust” responsibility to deliver service to American Indian Tribal Governments through a government-to-government relationship.
- B. All American Indian Tribal Governments and individuals have equal access to USDA conservation programs, services, and available Technical Service Provider assistance, including opportunities to be certified and to provide technical services as a Technical Service Provider.

Subpart C – General Requirements

4XX.20 General Requirements

The following serve as the basis for Technical Service Provider implementation:

- A. USDA and NRCS standards must be met.
- B. NRCS will:
 - (1) Ensure that an effective mix of private and public sector technical assistance is used;
 - (2) Implement a measurement and accountability system that measures and monitors the use of, and assistance provided by Technical Service Providers; and
 - (3) Make technology and technological tools widely available for use by Technical Service Providers. Applicable fees may apply to specific technology and tools.
- C. The USDA and NRCS appeals and mediation policy will be used to resolve disputes regarding technical services acquired from Technical Service Providers.
- D. Administrative and program responsibility will remain with NRCS and the USDA Farm Service Agency, including determination of eligibility, ranking applications, contract approval, practice payments, etc.

4XX.21 Reserved.

Subpart D – Liability

4XX.30 Technical Service Providers.

Technical Service Providers:

- A. Are legally liable for the technical services they provide.
- B. Must indemnify and hold the Department and the program participant harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions by the Technical Service Provider in connection with the technical service provided.

4XX.31 Reserved.

Subpart E – Freedom of Information Act and Privacy Act

4XX.40 Confidentiality of Program Participant Personal Information.

- A. To ensure the confidentiality of program participant personal information for program participants receiving technical services from Technical Service Providers hired by the Department, the inclusion of a non-disclosure clause will be included in Departmental agreements and contracts.

- B. Technical Service Providers hired directly by program participants are not subject to Federal disclosure and privacy laws, including the Freedom of Information Act and the Privacy Act. Therefore, the Department encourages program participants to ensure that their contracts with Technical Service Providers provide for the appropriate confidentiality of personal information.

4XX.41 Reserved.

Subpart F – Roles and Responsibilities

4XX.50 NRCS National Headquarters Officials.

A. The Deputy Chief for Science and Technology, under the general direction of the Chief, provides leadership for an efficient and effective Technical Service Provider process with technical, programmatic, and training documents and tools available to Technical Service Providers.

B. The Deputy Chiefs for Soil Survey and Resource Assessment, Programs, Strategic Planning and Accountability, and Management provide leadership to ensure that all components to support an efficient and effective Technical Service Provider process in their area of responsibility are carried out; including web based technical and programmatic documents and tools, and training.

4XX.51 Regional Conservationists.

A. Provides leadership to ensure that the agency's Technical Service Provider process is operating efficiently and effectively at the regional level.

B. Provides leadership to State Conservationists to coordinate professional development opportunities and training for Technical Service Providers within their region.

C. Provides leadership for quality assurance activities of Technical Service Provider certification applications and technical services to program participants within their region.

4XX.52 State Conservationists/Directors of the Pacific Basin and Caribbean Areas.

A. Provide leadership to ensure that the agency's Technical Service Provider process is operating efficiently and effectively at the State level.

B. Work with Universities, Colleges, Land Grant Institutions, Cooperative Extension Service, State agencies, Certifying Organizations, Private Entities, the NRCS Foundation, and other sources to identify, develop, and make available the training needed for individuals to become Technical Service Providers, as well as professional development opportunities for certified Technical Service Providers.

C. Ensure that appropriate state technical, programmatic, and related reference documents and tools are available to Technical Service Providers on the web or through other sources.

D. Ensure that technical services from Technical Service Providers and opportunities to become Technical Service Providers are fully available to all, including Socially

Disadvantaged Producers, Beginning Farmers and Ranchers, Indian Tribes, Limited Resource Farmers, and Historically Underserved Groups and Individuals.

E. Disburse payments for services rendered under approved contracts and agreements.

F. Conduct quality assurance reviews of Technical Service Provider certification applications as well as Technical Service Provider technical service provided to ensure consistency with NRCS policies, procedures, and guidelines, and compliance with all regulatory requirements.

G. Conduct an interagency review session at least annually with the Farm Service Agency and other appropriate agencies and entities on the use and effectiveness of Technical Service Provider assistance, and elevates needed changes.

H. Identify and address issues and concerns that surface with the Technical Service Provider process.

4XX.53 District Conservationists/Designated Conservationists.

A. Provide leadership and serves as the agency point of contact regarding technical services provided at the local level by Technical Service Providers.

B. Maintain a case file copy of the technical service documentation provided at the local level by Technical Service Providers.

C. Receive the Technical Service Provider's signed technical certification that the technical services provided meet NRCS standards and are documented in accordance with agency policy and guidance.

D. Provide the NRCS certification for the approval of program payments. This does not include verifying the technical quality of the technical services provided. Technical quality will be handled through the quality assurance process.

Subpart G – Conflict of Interest

4XX.60 Reserved.

4XX.61 Memorandums of Understanding and Associated Agreements.

A. Memorandums of Understanding and associated agreements between USDA and conservation partners will need to be evaluated, and modified as needed, to avoid conflicts of interest or the appearance thereof as those partners engage in providing technical services as Technical Service Providers in accordance with program participant acquisition of technical services.

B. State Conservationists/Directors of the Pacific Basin and Caribbean Areas will monitor existing agreements and memorandums of understanding accordingly and make changes as needed.

4XX.62 NRCS Employees.

A. NRCS employees are prohibited from providing references for Technical Service Provider applicants.

B. Reserved.

Subpart H – Definitions

4XX.60 Purpose.

This subpart provides definitions for all of Title 4XX, Technical Service Provider Assistance.

4XX.61 Definitions.

- A. Approved List means the list of individuals, private sector entities, or public agencies certified by NRCS to provide technical services in specific States to a program participant or to the Department.
- B. Certification means the action taken by NRCS to approve an individual that meets, or an entity or public agency as having an employee or employees that meet, the minimum NRCS criteria for providing technical services for conservation planning, specific conservation practices, or other categories of technical services.
- C. Department means the NRCS, the Farm Service Agency, or any other agency or instrumentality of the U.S. Department of Agriculture that is assigned responsibility for all or a part of a conservation program authorized to utilize the services of Technical Service Providers.
- D. Entity means a corporation, joint stock company, association, limited liability partnership, limited liability company, nonprofit organization, a member of a joint venture, or a member of a similar organization.
- E. Private Sector includes private individuals, private entities, and non-profit organizations.
- F. Program participant or participant means a person who is eligible to receive technical or financial assistance under a conservation program authorized to utilize the services of Technical Service Providers.
- G. Public Agency means a unit or subdivision of Federal, State, local, or Tribal government, other than the U.S. Department of Agriculture.
- H. Recommending Organization means a professional organization, association, licensing board or similar organization with which NRCS has entered into an agreement to recommend qualified individuals for NRCS certification as Technical Service Providers for specific technical services.
- I. Technical Service Categories include specific conservation practices, combinations of conservation practices that normally fit with specific land uses in conservation systems or resource management systems, and conservation planning to the resource management system level or progressive planning.

J. Technical Service means the technical assistance provided by Technical Service Providers, including conservation planning, and/or the design, layout, installation, and checkout of approved conservation practices, or other categories of technical services.

K. Technical Service Provider means an individual, entity, or public agency certified by NRCS and placed on the approved list to provide technical services to program participants or the U.S. Department of Agriculture.

Part 4XX – Certification

Subpart A – Purpose, Authorities, and General Provisions

4XX.0 Purpose.

This Part states the general provisions, the process, certification renewal, and additional information about certification components.

4XX.1 Authorities.

The authorities for this part mirror those stated in Part 4XX, Technical Service Provider Assistance, of this Title.

4XX.2 General Provisions.

- A. NRCS will administer a national certification process utilizing national certification criteria.
- B. Individuals, private sector entities, and public agencies meeting the certification criteria for the technical services they desire to provide may be certified by NRCS to provide technical services in the States (and equivalent) and counties they request certification.
- C. Conservation districts and other public agencies partnering with NRCS under a revised cooperative working agreement for conservation districts, or a memorandum of understanding for other public agencies, in conjunction with USDA acquisition of technical services through contribution agreements, are not subject to the national certification process. They are, however, subject to the specific terms and conditions contained in the revised cooperative working agreement or the memorandum of understanding for delivering technical services as Technical Service Providers.
- D. Certification encompasses specific categories of conservation practices, conservation planning, and other technical services. State Conservationists and Directors of the Pacific Basin and Caribbean Areas are not expected to utilize those conservation practices or technical services that do not apply to their particular States and Areas.
- E. Applicants are required to sign a Certification Agreement with NRCS prior to being certified. The Certification Agreement will include the terms and conditions of the certification. See 4XX.41, Technical Service Provider Certification Agreement.
- F. Applicants must become certified and be placed on the NRCS approved list of Technical Service Providers before they are eligible to provide technical services as a Technical Service Provider in accordance with the 2002 Farm Bill.

- G. Employees of public agencies seeking certification to provide technical services outside of the auspices of their employing agency, or who have or are obtaining a financial interest in a Technical Service Provider business or organization, must provide NRCS with documentation of clearance from their employing agency and must follow the appropriate ethics requirements of their employing agency when providing technical services as an individual or through a business or organization.
- H. Technical Service Providers must warrant in writing the technical services they provide, in accordance with their Certification Agreement, and furnish a copy of the warrant to the program participant and NRCS. See Exhibit 4XX.41, Warranty of Technical Services Provided.

Subpart B – Certification Qualification Exemptions, Requirements, and Criteria

4XX.0 Certification Qualification Exemptions.

- A. Federally procured architectural and engineering (A&E) services are exempt from obtaining Technical Service Provider certification when NRCS is procuring A&E services to implement programs.
- B. Pending inclusion of this exemption in the NRCS final Technical Service Provider rule, such services will receive interim exemption.
- C. NRCS requires A&E vendors to be responsible for professional quality, technical accuracy, and coordination of all services required under their contracts and in accordance with the Federal Acquisition Regulations Subpart 36.6 Architect – Engineer Services.

4XX.0 Certification Qualification Requirements.

To qualify for certification, applicants must:

- A. Have the technical training, education, or experience to perform the level of technical service for which certification is sought, or be recommended for NRCS certification by an approved recommending organization;
- B. Meet any applicable licensing or similar qualification standards established by State (and equivalent) or Tribal law;
- C. Demonstrate, through documentation of training or experience, familiarity with NRCS guidelines, quality criteria, standards, and specifications as set forth in applicable NRCS directives, including topical manuals and handbooks, field office technical guides, and supplements thereto for planning and applying specific conservation practices and management systems for which certification is sought; and
- D. Not be decertified as a Technical Service Provider at the time of application for certification.

4XX.1 Certification Criteria.

To become certified as a Technical Service Provider, individuals must also:

- A. Meet the NRCS national criteria established for certification;
- B. Self-certify that they comply with all State (and equivalent), Tribal, and local laws and requirements for providing technical services in the State (and equivalent) for which they are requesting certification.

C. Self-certify that they meet the certification criteria for the categories of technical services for which they are seeking certification.

D. Be familiar with any unique requirements at the county level for particular conservation practices or technical services before providing those services locally. Applicants must be aware of those local requirements and must agree to familiarize themselves with those requirements by contacting the appropriate NRCS conservationist before providing technical services.

Subpart C – Certification Process and Agreements with Recommending Organizations

4XX.20 Certification Process

- A. The certification process is depicted in the following exhibits:
 - (1) 4XX.XX, Certification Process for Individuals; and
 - (2) 4XX.XX, Certification Process for Private Sector Entities and Public Agencies.

- B. The following further outlines the certification process:
 - (1) Individuals may submit an application for certification to NRCS or request certification through a recommending organization to NRCS.

 - (2) Applicants are to send applications electronically, through TechReg, located at <http://techreg.usda.gov>.

 - (3) NRCS will randomly review applications submitted for certification for quality assurance. If NRCS discovers that an applicant has submitted any false information, it will initiate the decertification process for that applicant.

 - (4) Upon receipt of a complete certification application documenting that certification criteria has been met, NRCS will:
 - (i) Enter into a Certification Agreement with the applicant (See 4XX.XX, Technical Service Provider Certification Agreement);

 - (ii) Place the applicant on the NRCS approved list of Technical Service Providers; and

 - (iii) Make the approved list available to the public.

4XX.21 Agreements with Recommending Organizations

- A. NRCS may enter into appropriate agreements, including memorandums of understanding, with organizations that NRCS determines have an adequate accreditation program in place to train, test, and evaluate candidates for competency in a particular area or areas of technical service delivery and whose accreditation program NRCS determines meets the certification criteria as set forth for the technical services to be provided.

- B. NRCS will notify recommending organizations concerning any changes in the agency's certification criteria for individuals to become certified to provide specific technical services.

- C. NRCS has entered into several agreements or memoranda of understanding. Copies of these are contained in Subpart E, Exhibits, of this Part.

Subpart D – Certification Renewal and Additional Provisions

4XX.30 Certification Renewal.

- A. NRCS certifications are in effect for three years from the initial certification date and automatically expire unless they are renewed for an additional three years.
- B. Technical Service Providers may request renewal of their certification by:
 - (1) submitting an electronic certification renewal request to NRCS through TechReg prior to the expiration of their current certification; and
 - (2) Signing a new Certification Agreement.

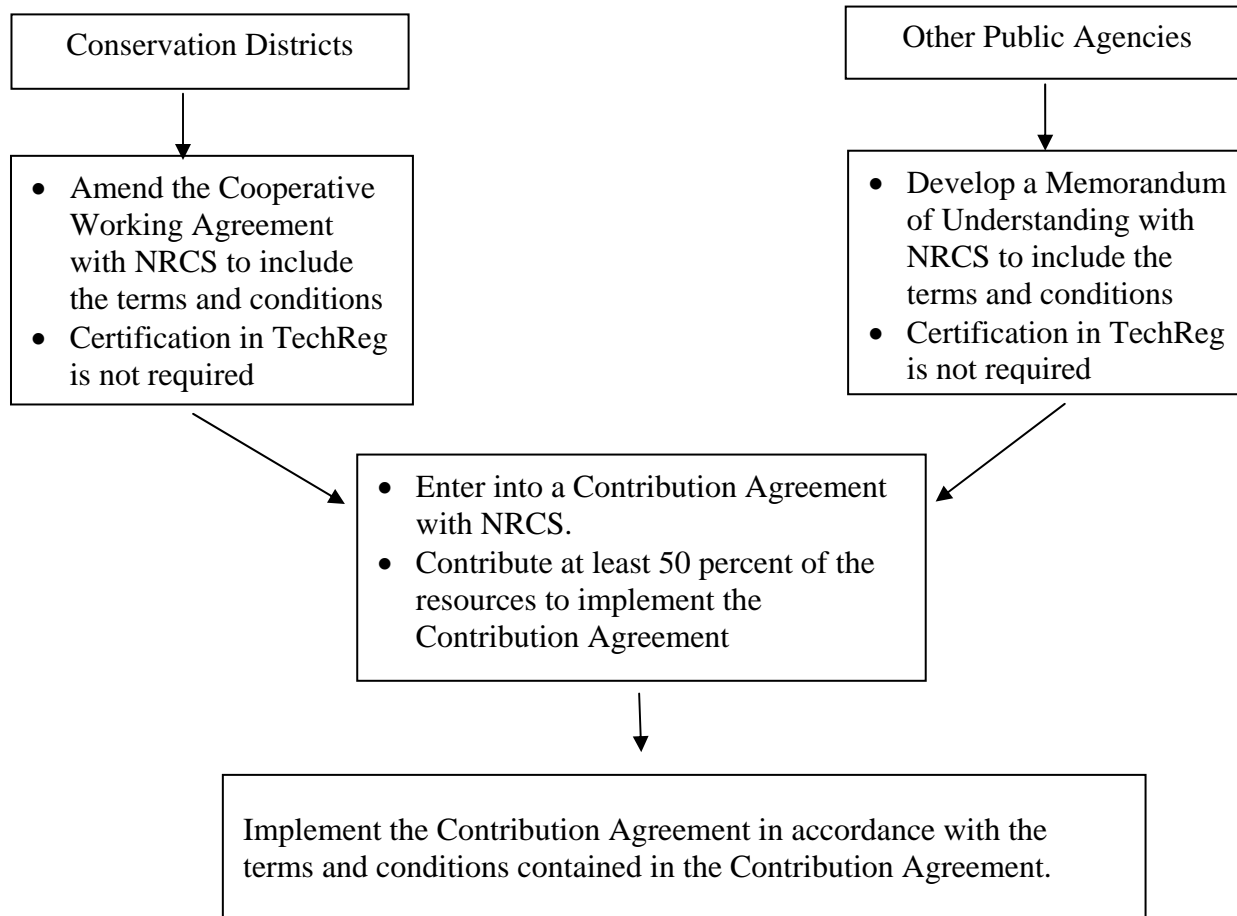
4XX.31 Additional Provisions.

NRCS may establish a fee for the value for the services provided to individuals, private sector entities, and public agencies to become certified as Technical Service Providers.

Subpart E – Exhibits

4XX.40 Public Agency Approval to Provide Technical Service Provider Assistance Through Contribution Agreements.

Public Agency Approval to Provide Technical Service Provider Assistance through Contribution Agreements



4XX.41 Warranty of Technical Services Provided.

Warranty of Technical Services Provided

I hereby warrant that the technical services I provided as a Technical Service Provider:

- (1) Comply with all applicable Federal, State, Tribal, and local laws and requirements,
- (2) Meet applicable USDA standards, specifications, and program requirements,
- (3) Are consistent with and meet the particular conservation program goals and objectives, and
- (4) Incorporate, where appropriate, low-cost alternatives that address the resource issues.

Program Participant Information:

Name: _____

Conservation Program: _____

Technical Service Category: _____

Technical Service: _____

Technical Service Provider Information:

Name: _____

Signature: _____

Date: _____

Technical Service Providers must warrant in writing the technical services they provide, in accordance with their Certification Agreement, and furnish a copy of the warrant to the program participant and NRCS.

4XX.42 Technical Service Provider Certification Agreement.

Technical Service Provider Certification Agreement

By signing this Certification Agreement, I (insert name of individual, Private Sector Entity or Public Agency) agree to the terms set forth below, which are required for certification as a technical service provider. I understand that certification by the USDA qualifies me to provide technical services to Title XII of the Food Security Act of 1985 program participants and the USDA. Certification does not constitute federal employment or any other legal relationship with the federal government nor does it entitle me to any special benefits or rights. Further, I understand that I am not a certified technical service provider until the Natural Resources Conservation Service (NRCS): (1) determines that my certification application meets the requirements for certification set forth in 7 CFR Part 652, (2) signs this Certification Agreement, and (3) includes my name on the approved list of technical service providers.

I. Certification Terms.

A. USDA Standards and Specifications. I am familiar with and agree to meet all applicable USDA standards, specifications, and program requirements as set forth in USDA guides, handbooks, and manuals for the technical services I provide.

B. Compliance with Applicable Laws and Regulations. I agree to comply with all applicable Federal, State, Tribal and local laws and requirements for the technical services I provide, including but not limited to, 7 CFR part 652. I further agree that I must be familiar with any unique criteria required at the county level for particular conservation practices or technical services before providing technical services in a particular county. I acknowledge that I must be aware of these local criteria and agree to familiarize myself with any such criteria by contacting the appropriate NRCS State official before providing technical services.

C. Warranty of Work Quality. I agree to warrant in writing on each plan or other technical service document submitted to USDA or the program participant that the technical services rendered: (1) comply with all applicable Federal, State, Tribal, and local laws and requirements, (2) meet applicable USDA standards, specifications, and program requirements, (3) are consistent with and meet the particular conservation program goals and objectives for which the program agreement or contract was entered into by the program participant or USDA, respectively, and (4) incorporate, where appropriate, low-cost alternatives that address the resource issues.

D. Liability and Indemnification. I assume all legal responsibility for the technical services I provide. I hold USDA harmless and indemnify the same for any costs, damages, claims, liabilities, and judgments arising from any negligent or wrongful acts or omissions associated with my delivery of technical services.

E. Quality Assurance. I agree to submit to quality assurance reviews by the USDA or its agents of the technical services I provide.

F. Reporting and Documentation. I will develop and maintain documentation of the technical services I provide, including invoices, in accordance with USDA manuals, handbooks, and technical guidance and furnish this documentation to the local USDA Service Center office and the program participant when the particular technical service is completed. I will report technical service accomplishments into the NRCS electronic tracking system at the time the technical services are completed.

G. Licensing Requirements. I will maintain, for the period of this certification, any licensing or similar qualification standards established by Federal, State, or Tribal law that I identified in my Application for Certification or that are required for the type of technical services I provide.

H. Duration of Certification, Cessation of Services, and Renewal Requirements. I acknowledge that my certification as a technical service provider is for a term of three (3) years from the date NRCS first signs this Certification Agreement. I will cease providing services as a technical service provider immediately upon the expiration of the NRCS certification, the lapse of any applicable licensing or similar qualifications standards, or the effective date of being decertified. If I wish to renew my certification as a technical service provider, I will submit an application for certification renewal at least 60 days prior to the expiration of this certification.

I. Scope of Services by Public Sector Employees. If I provide technical services under the auspices of a public agency's certification, I understand that I am ineligible to provide technical services as a certified individual or under the auspices of a certified private sector entity.

J. Civil Rights. I agree that, in providing technical services, I will not discriminate on the basis of race, color, national origin, sex, age, or disability. I further agree that if I am providing technical services as a private-sector entity that I will meet all Federal requirements as an equal opportunity employer. This includes administering policies and practices that are designed to prevent discrimination against any qualified employee or applicant on the basis of race, color, religion, national origin, sex, or disability. This policy of nondiscrimination applies to all employment practices, including hiring, compensation, benefits, promotion, training, and termination.

K. Disclosure of On-Line Information. I agree that the personal information (excluding sensitive data like Social Security Number) I enter into my application for certification will be available on-line for public access. I understand that program participants seeking the services of a Technical Service Provider will have access to this information as well as other members of the public that access the Technical Service Provider TechReg web site.

II. Additional Terms Applicable to Private Sector Entity or Public Agency.

In addition to the terms set forth above, a private sector entity or public agency agrees to the following terms:

A. Certified Individual. A private sector entity or public agency will have, at all times, an individual who is a certified technical service provider authorized to act on its behalf.

B. Changes to List of Certified Individuals. A private sector entity or public agency will provide to NRCS a list of certified individuals who are authorized to act on its behalf and will

provide to NRCS an amended list whenever there is a change in the identity of the individuals working under its auspices.

C. Liability for Individuals Performing Work under Auspices. A private sector entity or public agency assumes all liability for the work performed by an individual working under its auspices.

This agreement is entered into under the authority of 16 U.S.C. 3842.

I am signing this agreement as _____ an individual, or on behalf of _____ a private-sector entity, or on behalf of _____ a public agency (please check one).

_____	_____	_____
Signature	Title	Date
Name	_____	
Mailing Address	_____	
Telephone and Facsimile Number	_____	
E-Mail Address	_____	

_____	<u>State Conservationist, NRCS</u>	_____
Signature	Title	Date
Name	_____	
Contact	_____	
Address	_____	

E-Mail	_____	

For specific State Technical Service Provider information, contact the NRCS State Technical Service Provider Contact listed on the TechReg Web site.

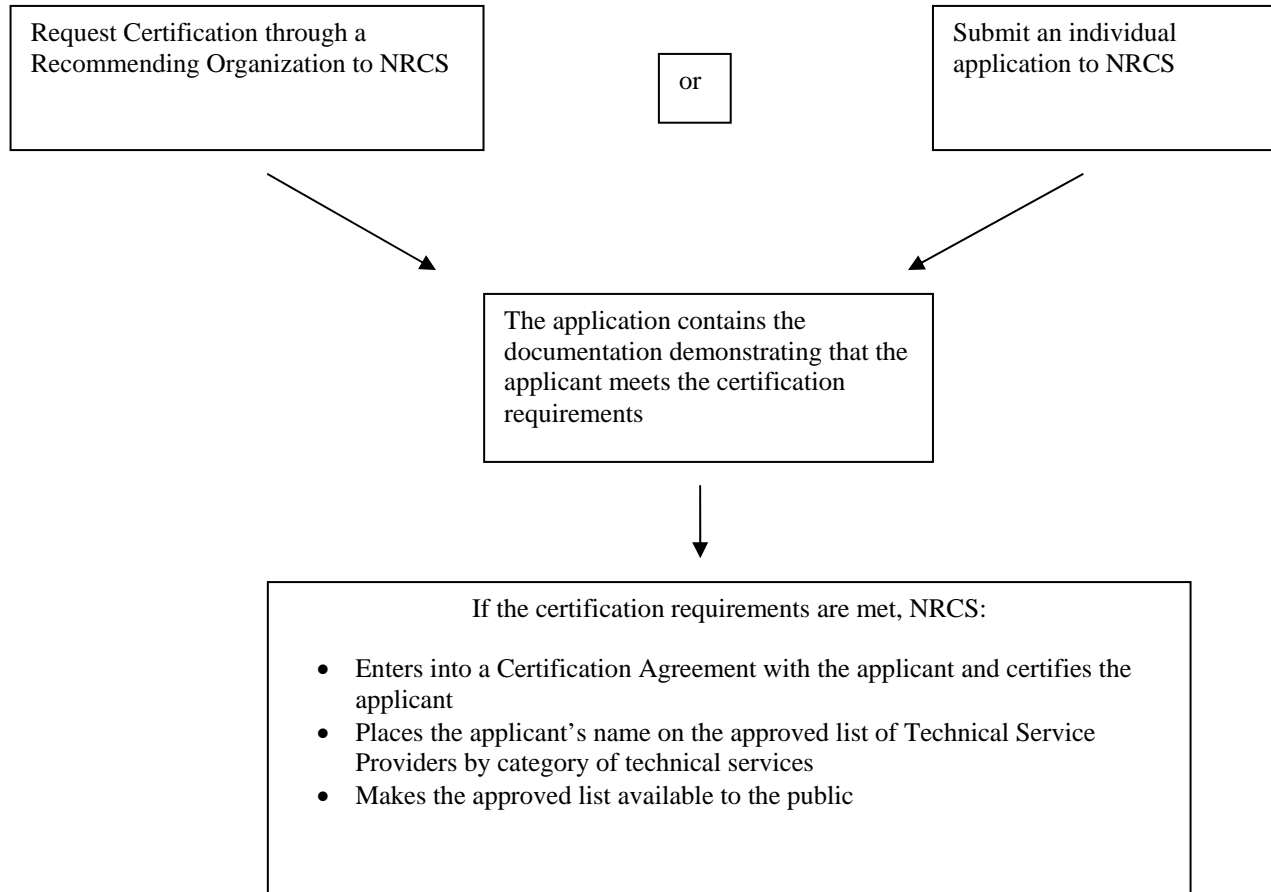
Based on the above signature, this agreement will expire on _____.

For Private Sector Entity or Public Agency: List the certified individuals authorized to act on your behalf (use additional pages as necessary). Individuals must have a current NRCS certification in each State in which your organization plans to provide technical services:

Name of Certified Individual Date of Certification Categories and States where Certified

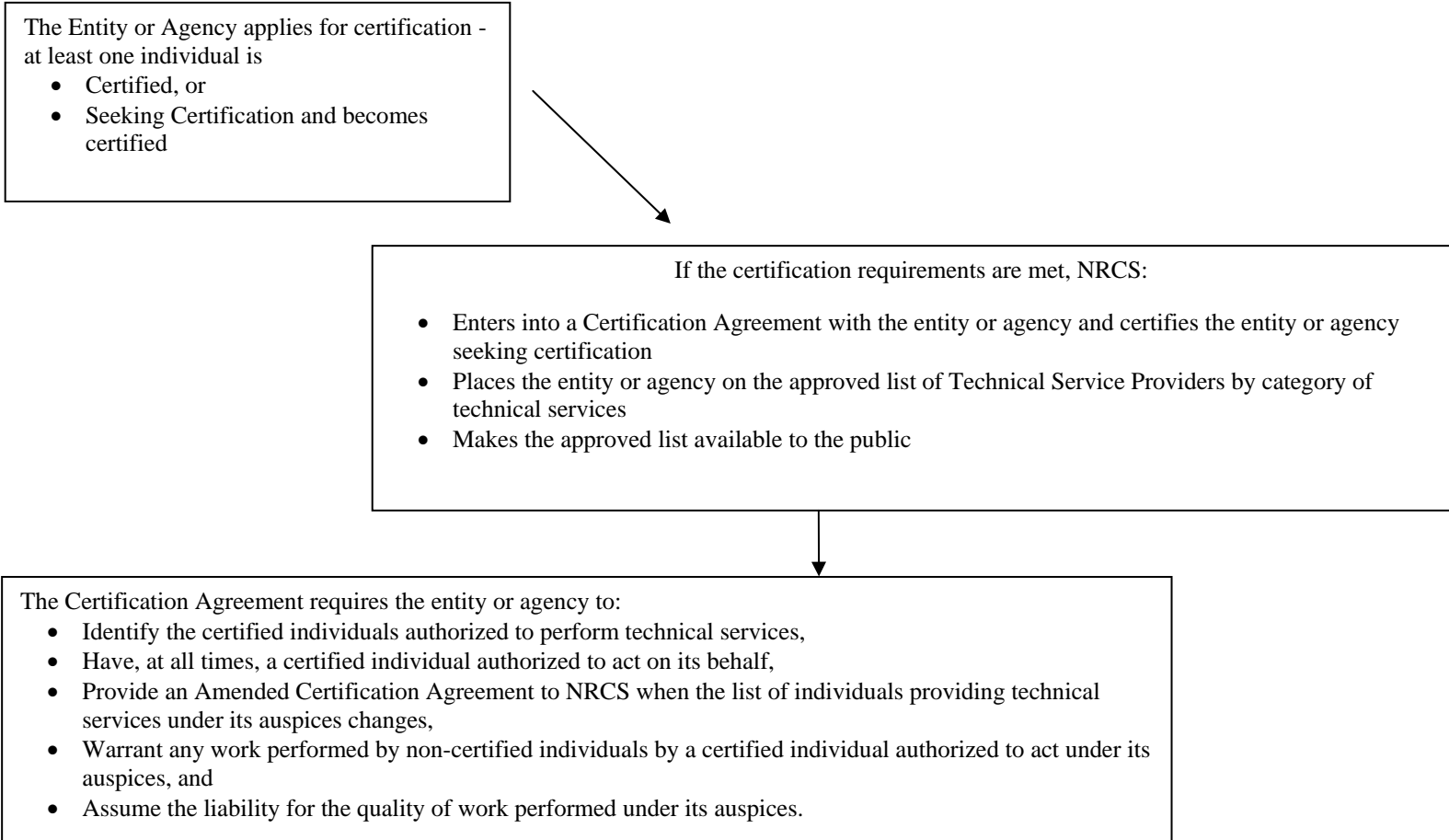
4XX.43 Certification Process for Individuals.

Certification Process for Individuals



4XX.44 Certification Process for Private Sector Entities and Public Agencies.

Certification Process for Private Sector Entities and Public Agencies



4XX.45 Memorandum of Understanding Template.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ANY ORGANIZATION
AND THE
U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

This Memorandum of Understanding (MOU) is entered into between the ANY ORGANIZATION (ACRONYM) and the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS).

I. BACKGROUND

NRCS is responsible for providing technical assistance to land owners and operators in protecting soil, water, and related resources under the provisions of Title XII of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 et seq., and other applicable legislation. This legislation authorizes NRCS to cooperate with various Federal agencies, State and local governments, nongovernmental organizations, and individuals in order to carry out its responsibilities and further the conservation mission of NRCS on private lands in a voluntary, scientifically-based manner.

In addition to the technical assistance available from NRCS, USDA conservation program participants have the option of obtaining conservation technical assistance from individuals certified as Technical Service Providers by NRCS.

Section 2701 of the Farm Security and Rural Investment Act of 2002, Public Law 107-171, May 13, 2002, (2002 Farm Bill) amended Section 1242 of the Food Security Act of 1985 to require the Secretary to provide technical assistance under Title XII of the Act to a program participant “directly, or ... through a payment ... for an approved third party, if available.”

Section 1242 also requires the Secretary to establish a system for approving individuals and entities to provide technical assistance to carry out programs under this title including criteria for the evaluation of providers or potential providers of technical assistance.

ACRONYM is a BLANK and BLANK (501-(c)-(3), non-profit, private, or other). ACRONYM provides BLANK and BLANK (services).

II. PURPOSE

The purpose of this MOU is to establish a general framework for cooperation between ACRONYM and NRCS for the purpose of recommending individuals for possible NRCS certification. Through the MOU, ACRONYM, under its CERTIFICATION PROGRAM, may submit recommendations to NRCS of individual's who meet the ACRONYM's CERTIFICATION PROGRAM standards, and NRCS may consider such individuals for certification as third party technical service providers. It is the intent of both parties that this cooperative effort shall be for the mutual benefit of each party as well as program participants who wish to avail themselves of technical services provided by certified Technical Service Providers.

This MOU is to officially recognize that a person who has met the standards set by ACRONYM and is certified as a CERTIFIED ACRONYM and meets the NRCS performance proficiencies for providing conservation assistance in the suites of practices of: nutrient management, pest management, and residue management.

This MOU will benefit NRCS by providing certified ACRONYM recommended by ACRONYM the opportunity to become certified by NRCS as a Technical Service Provider. This in turn will assist NRCS in carrying out its mission of providing quality conservation technical assistance to its customers.

This MOU will benefit ACRONYM by providing certified ACRONYM certified individuals the opportunity to become certified as a Technical Service Provider by NRCS. NRCS will place the certified Technical Service Provider on the approved list to provide technical service to USDA conservation program participants, thereby expanding their scope of services to existing and future clientele.

III. RESPONSIBILITIES

A. ACRONYM will:

1. Provide a statement that the Certified ACRONYM certified individuals ACRONYM recommends for certification as a Technical Service Provider meet the minimum NRCS performance proficiencies for providing conservation assistance in the suites of practices of: nutrient management, pest management, and residue management;
2. Establish and maintain a registry of individuals who meet the ACRONYM qualifications to provide conservation technical assistance in the suites of practices identified in A.1. The registry will include a list of services each individual is qualified to provide. The registry will contain the following information:
 - a) Name of individual
 - b) Company (if applicable)
 - c) Address

- d) Phone and fax numbers, and e-mail address if applicable
 - e) Skill area
 - f) Service area
 - g) Expiration date of qualification under ACRONYM
 - h) ACRONYM as the recommending organization;
3. Annually record recommended individuals' efforts to satisfy continuing education requirements each year to maintain certification under ACRONYM.
- a) Each individual who wishes to remain on the registry is required to receive appropriate training in conservation assistance to maintain skill levels at least once every three years; and
 - b) The registry will indicate the deadline that each individual must receive training. Updates indicating the date training was last received will be submitted in accordance with their continuing education cycle dates;
4. Update all information on its registry annually, or more frequently if necessary, and provide this information to NRCS in a timely manner;
5. Remove individuals from the registry who do not maintain required levels of training within the 3-year timeframe or who are found to be providing substandard assistance from its registry and immediately notify the individuals and NRCS;
6. Notify recommended members in a timely manner when technical and programmatic materials are available from NRCS to ensure that the highest quality of conservation technical assistance is available;
7. Upon request and with agreement from all parties involved, provide NRCS with a list of courses an individual on the ACRONYM registry used to fulfill continuing education requirements;
8. Inform members that all providers to be certified by NRCS must complete a Certification Agreement as a condition of their certification by NRCS as a Technical Service Provider;
9. Inform members certified as Technical Service Providers by NRCS that they are subject to the same annual quality reviews as NRCS employees; and
10. Inform members certified as Technical Service Providers by NRCS that they cannot legally certify completed cost shared practices for payment. Only NRCS employees have the legal authority to do so.

B. NRCS will:

1. Advise ACRONYM of the knowledge, skills, and proficiencies an individual will need to possess to qualify for Technical Service Provider designation for each of the technical service categories identified in this MOU;
2. Ensure that the ACRONYM standards for recommending individuals meet NRCS performance proficiency criteria for the suites of practices covered by this MOU;
3. Provide ACRONYM with access to current program information and appropriate technical reference documents for use by Technical Service Providers. Such documents will include manuals and standards and specifications for appropriate conservation practices;
4. Provide the approved list of Technical Service Providers to USDA offices;
5. Assist in suggesting training opportunities for ACRONYM members, provide training materials when available, and serve as a resource when practicable; and
6. Remove Technical Service Providers from the approved list through the decertification process if it is determined that the Technical Service Provider has failed to meet the terms and conditions of the Certification Agreement.

C. Agreed that both Parties will:

Meet as requested by either party to review progress and discuss methods of improving this process.

IV. GENERAL PROVISIONS

- A. This MOU takes effect upon the signature of NRCS and the ACRONYM and shall remain in effect for 5 years from the date of execution unless amended or terminated as set forth herein. This MOU may be extended or amended upon written request of either NRCS or ACRONYM and the subsequent written concurrences of the other. Either NRCS or ACRONYM may terminate this MOU with a 30-day written notice to the other.
- B. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
- C. Termination of this agreement will not affect individuals certified as Technical Service Providers by NRCS. Certified individuals will continue to be listed on the approved list of Technical Service Providers in accordance with the terms and conditions of their certification.
- D. NRCS and ACRONYM and their respective officers will handle their own activities and utilize their own resources, including expenditures of their own funds in pursuing the

purposes of this MOU. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

E. None of the information in this MOU shall obligate either USDA or ACRONYM to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of USDA and ACRONYM will require execution of separate agreements and be contingent upon the availability of funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

V. TECHNICAL AND ADMINISTRATIVE CONTACTS

A. ACRONYM

Name

Title

Address

Telephone

Facsimile

E-mail address

B. NRCS

Lawrence E. Clark

Deputy Chief for Science and Technology

P.O. Box 2890, Room 5006 South Building

Washington, DC 20013-2890

Telephone: (202) 720-4630

Facsimile: (202) 720-7710

E-mail: lawrence.clark@usda.gov

VI. AUTHORITY

NRCS enters into this agreement under the authority of section 1242 of the Food Security Act of 1985, 16 U.S.C. 3842.

VII. APPROVAL

The undersigned parties hereby agree to the terms and conditions specified above.

_____	_____
BRUCE I. KNIGHT	DATE
Chief	
Natural Resources Conservation Service	

_____	_____
NAME	DATE
President	
Any Organization	

_____	_____
NAME	DATE
Chair, Certification Board	
Any Organization	

4XX.46 Memorandum of Understanding, American Society of Agronomy, Certified Crop Advisers.

Attachment (PDF file)

4XX.47 Memorandum of Understanding, American Society of Agronomy, Certified Professional Agronomists.

Attachment (PDF file)

4XX.48 Memorandum of Understanding, American Society of Agronomy, Certified Professional Crop Scientists.

Attachment (PDF file)

4XX.49 Memorandum of Understanding, American Society of Agronomy, Certified Professional Soil Scientists.

Attachment (PDF file)

4XX.49A Memorandum of Understanding, Environmental Management Solutions, LLC.

Attachment (PDF file)

4XX.49B Memorandum of Understanding, Irrigation Association.

Attachment (PDF file)

4XX.49C Memorandum of Understanding, National Alliance of Independent Crop Consultants.

Attachment (PDF file)

4XX.4D Memorandum of Understanding, Society for Range Management.

Attachment (PDF file)

4XX.4E Memorandum of Understanding, Society of American Foresters.

Attachment (PDF file)

4XX.4F Memorandum of Understanding, The University of Tennessee.

Attachment (PDF file)

4XX.4G Memorandum of Understanding, The Wildlife Society.

Attachment (PDF file)

Part 4XX – Technology, Technological Tools, and Training

Subpart A – Purpose and Authorities

4XX.0 Purpose

This Part provides NRCS policy on technology, technical tools, and training regarding Technical Service Providers and describes roles and responsibilities for implementing this policy.

4XX.1 Authorities

The authorities for this part mirror those stated in Part 4XX, Technical Service Provider Assistance, of this Title.

Subpart B – Policy

4XX.10 Policy on Availability of Technology and Technological Tools

- A. NRCS will make technology and technological tools widely available for use by Technical Service Providers.
- B. NRCS may apply fees to specific technology and tools.
- C. NRCS may have available online technical and other related materials and tools, for which Web site addresses and links or referrals to other sources of technical and related resources will be provided, as appropriate. Examples include NRCS' electronic Field Office Technical Guide (eFOTG), the electronic directives system supplying general and topical policy, procedures, instructions, and other technical guidance, topical manuals and handbooks, and other references.
- D. NRCS will use existing agency policy and guidance for the evaluation and assessment of all new technologies and innovative practices prior to approval and acceptance for use in NRCS administered programs. Policy for interim conservation practice standards and variances to national conservation practice standards can be found in Title 450, Technology, of the General Manual, Part 401, Technical Guides, Subpart B, Conservation Practice Standards. Policy for field trials is located in Title 450, Technology, of the General Manual, Part 403, Conservation Field Trials. The process for developing, reviewing, and approving State interim standards is included in the National Handbook of Conservation Practices (NHCP), Exhibit 2.

4XX.11 Policy on Technical Service Provider Training

- A. NRCS will help identify training gaps and help make available the training needed for individuals to become Technical Service Providers, as well as professional development opportunities for certified Technical Service Providers.
- B. NRCS will establish fees for the value of the NRCS training provided.

Subpart C – Roles and Responsibilities

4XX.20 NRCS Roles and Responsibilities.

NRCS will:

- A. Provide Web site addresses and links or referrals for sources of technical and related resources, as appropriate. Examples include NRCS' electronic Field Office Technical Guide (eFOTG), the electronic directives system supplying general and topical policy,

procedures, instructions, and other technical guidance, topical manuals and handbooks, and other references;

B. Work with Universities, Colleges, Land Grant Institutions, Cooperative Extension Service, State agencies, Certifying Organizations, Private Entities, the NRCS Foundation, and other sources to fulfill policy requirements in 4XX.11, Policy on Technical Service Provider Training, A., above.

4XX.21 Technical Service Providers Roles and Responsibilities.

Technical Service Providers are responsible for:

- A. Obtaining the training they need to become certified as Technical Service Providers;
- B. Keeping their own training records up to date;
- C. Providing documentation in TechReg or to recommending organizations on the specific training they have received.

4XX.22 Individuals, Private Sector Entities, and Public Agencies Roles and Responsibilities.

- A. Individuals, private sector entities, and public agencies are responsible for all expenses associated with becoming certified as a Technical Service Provider or with renewing their certification.
- B. Reserved.

Part 4XX – Decertification and Recertification

Subpart A – Reserved

Subpart B – Policy and Causes for Decertification

4XX.XX Policy

- A. In order to protect the public interest, the policy of NRCS is to maintain certification of Technical Service Providers who act responsibly in the provision of technical services.
- B. Responsible actions include meeting NRCS standards and specifications when providing technical services.

4XX.XX Causes for Decertification

The State Conservationist, in whose State a Technical Service Provider is certified to provide technical service, may decertify the Technical Service Provider, a private-sector entity or public agency and all members thereof or specifically named certified individuals of the entity or agency, for the following reasons:

- A. Failure to meet NRCS standards and specifications in the provision of technical services to the extent that the practice is ineffective or environmentally harmful.
- B. Violation of the terms of the Certification Agreement which may include but is not limited to (1) a demonstrated lack of understanding of, or an unwillingness or inability to implement, NRCS standards and specifications for a particular practice for which the Technical Service Provider is certified, or (2) the provision of technical services for which the Technical Service Provider is not certified.
- C. Providing false information on the certification application.
- D. Any other cause of a serious or compelling nature as determined by NRCS that demonstrates the Technical Service Provider's inability to fulfill the terms of the Certification Agreement in providing the technical service.

Subpart C – Decertification Process

4XX.20 Notice of Proposed Certification.

- A. The State Conservationist or Director of the Pacific Basin or Caribbean Area will send, by certified mail, return receipt requested, a written notice of proposed decertification to the Technical Service Provider proposed for decertification. See Subpart E, Exhibits, of this Part for a sample decertification notice.
- B. The notice contains:
 - (1) The cause(s) for decertification, and
 - (2) Any documentation supporting decertification.
- C. When a private sector entity or public agency is being notified of a proposed decertification, any certified individual(s) working under the auspices of such organization who are also being considered for decertification, will receive a separate Notice of Proposed Decertification. The certified individual(s) will be afforded separate appeal rights following the process set forth below.

4XX.21 Contesting a Notice of Decertification.

- A. A Technical Service Provider receiving a decertification notice has the right to contest the Notice of Proposed Decertification.
- B. To contest a proposed decertification notice, the Technical Service Provider must submit in writing the reasons why the State Conservationist should not decertify him/her, including any mitigating factors as well as any supporting documentation.
- C. The written challenge and documentation must be submitted to the State Conservationist within 20 calendar days from the date of receipt of the Notice of Proposed Decertification.

4XX.22 Decision by the State Conservationist/Director of the Pacific Basin or Caribbean Area.

- A. The State Conservationist/Director of the Pacific Basin or Caribbean Area will issue a written determination within 30 days of the date of the notice of proposed decertification. A copy of the decision and the administrative record will be sent promptly by certified mail, return receipt requested, to the Technical Service Provider.
- B. The decertification determination will be based on an administrative record comprised of:
 - (1) The Notice of Proposed Decertification and supporting documents, and

- (2) The Technical Service Provider’s written response and supporting documentation.

C. If the State Conservationist decides to decertify the Technical Service Provider, the decision will include:

- (1) The reasons for the decertification,
- (2) The period of decertification, and
- (3) The scope of decertification.

D. If the State Conservationist/Director of the Pacific Basin or Caribbean Area decides not to decertify the Technical Service Provider, written notice of the decision will be sent to the Technical Service Provider.

4XX.23 Appealing a Decertification Decision.

A. A Technical Service Provider has 20 calendar days from the date of receipt of the State Conservationist’s/Director’s decertification decision to appeal the decision to the Chief of NRCS.

B. Any appeal by the Technical Service Provider must be in writing.

C. An appeal of a decertification decision must state the reason(s) for the appeal and any arguments in support of those reasons.

D. If the Technical Service Provider fails to appeal the decertification decision within 20 calendar days of the date of its receipt, the decision of the State Conservationist/Director of the Pacific Basin or Caribbean Area is final.

4XX.24 Final Decision by the Chief of NRCS.

A. Within 30 calendar days of receipt of the Technical Service Provider’s written appeal, the Chief or his/her designee will make a final determination of decertification. The final determination will be based upon the administrative record and any additional information submitted to the Chief by the Technical Service Provider.

B. The decision of the Chief or his/her designee is final and not subject to further administrative review.

C. The Chief’s determination will include the reason(s) for decertification or for overturning a decertification decision, and if decertifying the Technical Service Provider, the period of decertification and the scope of decertification.

4XX.25 Period of Decertification.

The period of decertification will not exceed three years in duration and will be decided by the decertifying official, the State Conservationist/Director of the Pacific Basin or Caribbean Area or the Chief, as applicable, based on all relevant facts and the seriousness of the reasons for decertification, mitigating factors, if any, and the following general guidelines:

- A. For failures in the provision of technical service for which there are no mitigating factors, e.g., no remedial action taken by the Technical Service Provider, a maximum period of three years decertification.
- B. For repeated failures in the provision of technical service for which there are mitigating factors, e.g., the Technical Service Provider has taken remedial action to the satisfaction of NRCS, a maximum period of one to two years decertification; and
- C. For a violation of Certification Agreement terms, e.g., failure to possess technical competency for a listed practice, a period of one year or less, if the Technical Service Provider can master such competency within a period of one year.

4XX.26 Scope of Decertification.

- A. When the Technical Service Provider is a private sector entity or a public agency, the decertifying official may decertify the entire organization, including all the individuals identified as authorized to provide technical services under the auspices of such organization.
- B. The decertifying official may also limit the scope of decertification, for example, to one or more specifically named individuals identified as authorized to provide technical services under the organization's auspices or to an organizational element of the private sector entity or public agency.
- C. The scope of decertification will be set forth in the decertification determination and will be based upon the facts of each decertification action, including whether actions of particular individuals can be imputed to the larger organization.
- D. In cases where specific individuals are decertified only, a private sector entity or public agency must promptly file an amended Certification Agreement removing the decertified individual(s) from the Certification Agreement.
- E. In addition, the private-sector entity or public agency must demonstrate, to the satisfaction of the State Conservationist/Director of the Pacific Basin or Caribbean Area that they have taken affirmative steps to ensure that the circumstances resulting in decertification have been addressed.

4XX.27 Mitigating Factors.

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

- A. The Technical Service Provider worked, in a timely manner, to correct any deficiencies in the provision of technical service.
- B. The Technical Service Provider took the initiative to bring any deficiency in the provision of their technical services to the attention of NRCS (voluntary disclosure) and sought NRCS advice to remediate the situation.
- C. The Technical Service Provider took affirmative steps to prevent any failures in the provision of technical services from occurring in the future.
- D. Other indicators of Technical Service Provider integrity.

4XX.28 Effect of Decertification.

- A. USDA will not make payment for any technical services provided by a decertified Technical Service Provider during the period of decertification.
- B. The Department will not procure the services of a decertified Technical Service Provider during the period of decertification.
- C. NRCS will maintain a list of decertified Technical Service Providers and will remove decertified providers from the approved list.
- D. Program participants must not knowingly hire a decertified Technical Service Provider. It is the program participant's responsibility to check the decertified list before hiring a Technical Service Provider.
- E. Decertification of a Technical Service Provider in one State decertifies the provider in all States, the Pacific Basin Area and the Caribbean Area.

4XX.29 Effect of Filing Dates.

A Technical Service Provider's failure to meet the filing deadlines will result in the forfeiture of appeal rights. All filings must be received by NRCS no later than the close of business (5 p.m.) on the last day of the filing period.

Subpart D – Recertification

4XX.30 Applications for Recertification.

A decertified Technical Service Provider may apply to be re-certified in accordance with the certification provisions in this policy after the period of decertification has expired.

4XX.31 Decertified Technical Service Providers.

A decertified Technical Service Provider may not utilize the certification renewal process for re-certification.

Subpart E – Exhibits

4XX.40 Sample Decertification Notice

Part 4XX – Acquisition of and Payment for Technical Services

Subpart A – Purpose and Authorities

4XX.0 Purpose

This part provides policy and roles and responsibilities regarding the acquisition of and payment for technical services. It includes policies regarding

- A. Program participant acquisition of technical services and roles and responsibilities;
- B. Use of subcontractors by Technical Service Providers; and
- C. Payment for technical services.

4XX.1 Reserved

Subpart B – Policy

4XX.10 Policy Regarding Program Participant Acquisition of Technical Services

- A. Program participants may select NRCS or a Technical Service Provider to perform the technical services needed in conjunction with their conservation program contract or agreement. 4XX.30, Program Participant Acquisition of Technical Services, illustrates this process.
- B. Program participants will receive reimbursement for the technical services provided up to the not-to-exceed rate.

4XX.11 Policy on Use of Subcontractors by Technical Service Providers

- A. Technical service providers may utilize the services of subcontractors to provide specific technical services or expertise needed by the Technical Service Provider, provided that the:
 - (1) Subcontractors are certified by NRCS for the particular technical services to be provided and
 - (2) Technical services are provided in terms of their Certification Agreement.
- B. An example would be an engineering firm subcontracting with a crop consultant for designing the agronomic portion of a comprehensive nutrient management plan.

4XX.12 Policy for Payment for Technical Services.

- A. The process for making payments for technical services will be in accordance with the policy specific to the conservation program being utilized.
- B. Payment provisions must be included in the program participant's program contract or agreement prior to the program participant employing the services of a Technical Service Provider, except as provided in C., below.
- C. Program participants may be reimbursed for Technical Service Provider costs incurred prior to entering into a program contract or agreement as long as the participant meets the eligibility requirements for participating in the conservation program and the participant subsequently enters into a program contract or agreement. The program participant will only be eligible for reimbursement after the participant enters into an approved program contract or agreement. The technical services must be warranted by a certified Technical Service Provider and must be performed after March 1, 2003.
- D. The NRCS State Conservationist or Director of the Pacific Basin and Caribbean Areas may adjust payment rates on a case-by-case basis in response to unusual conditions or

unforeseen circumstances such as highly complex technical situations, agency error or omission, or major resource limitations.

E. Payments will not be made for any technical services provided by uncertified subcontractors.

Subpart C – Roles and Responsibilities

4XX.20 NRCS Roles and Responsibilities

NRCS is responsible for:

- A. Reimbursing the program participant or making payment directly to the Technical Service Provider upon receipt of an assignment of payment from the program participant.
- B. Providing program participants with 50 percent of the savings for actual charges below the not-to-exceed rate to apply toward their cost for practice installation within the cost share limitations of the conservation program.
- C. Establishing not-to-exceed payment rates for the technical services acquired by program participants in conjunction with their conservation program contract or agreement

4XX.21 Program Participants' Roles and Responsibilities

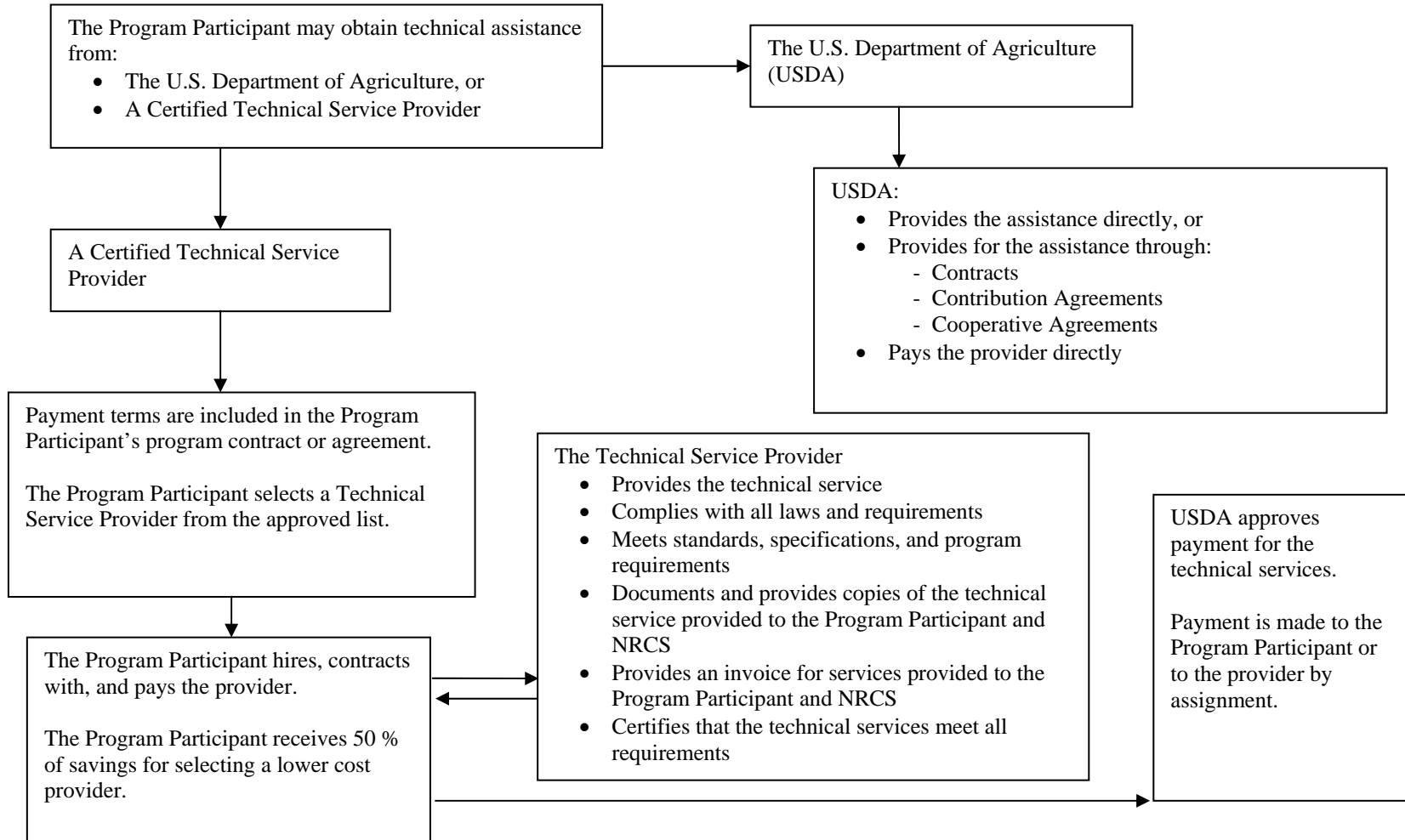
Program participants are responsible for:

- A. Selecting NRCS or a Technical Service Provider to perform the technical services needed in conjunction with their conservation program contract or agreement.
- B. If choosing a Technical Service Provider over NRCS — selecting, hiring, contracting with, and paying the Technical Service Provider, meeting compliance and regulatory responsibilities, and informing NRCS when the technical services have been completed.
- C. Ensuring that the Technical Service Provider they wish to hire is not decertified and checking the decertified list before hiring a Technical Service Provider.
- D. Ensuring that payment provisions are included in the program contract or agreement prior to employing the services of a Technical Service Provider, except as provided in 4XX.22. Policy, C., above.
- E. With regard to 4XX.22 Policy, C., above, meeting the eligibility requirements for participating in the conservation program for which costs are incurred and subsequently entering into a program contract or agreement.

Subpart D – Exhibit

4XX.30 Program Participant Acquisition of Technical Services.

Program Participant Acquisition of Technical Services



Part 4XX – USDA NRCS Delivery of Technical Services

Subpart A – Purpose and Authorities

4XX.0 Purpose

This subpart contains policy regarding USDA NRCS delivery of technical services and requisite roles and responsibilities.

4XX.1 Authorities

A. The authority for contribution agreements is Section 714 of the 2001 USDA Appropriation Act, Public Law 106-387. NRCS policy and guidance is in Title 120 of the General Manual, Circular 12, Part 401, available at <http://policy.nrcs.usda.gov> and cited therein.

B. NRCS policy and guidance for cooperative agreements are located in the Title 120 of the General Manual, Circular 12, Part 401 and the NRCS Federal Grants and Cooperative Agreements Handbook, available at <http://policy.nrcs.usda.gov> .

C. The Economy Act of 1932, as amended, 31 U.S.C. 1535, and the Federal Acquisition Regulations and related OMB Circulars.

Subpart B – Policy

4XX.10 Procurement Contracts, Contribution Agreements, and Cooperative Agreements.

State Conservationists and Directors of the Pacific Basin and Caribbean Areas may utilize procurement contracts, contribution agreements, and cooperative agreements to obtain needed technical services in accordance with the proper authorities, regulations, and policies, and the following guidance.

- A. Contracts will be solicited and awarded in accordance with applicable Federal, Departmental, and Agency regulations
- B. Contribution agreements will be entered into non-competitively. NRCS pays up to 50% of the cost of the technical service.
- C. Cooperative agreements will be awarded based on competition in accordance with 7 Code of Federal Regulations (CFR) 3015.158 (d). Requests for Proposals will be used for all cooperative agreements.

4XX.11 Economy Act Agreements.

Economy Act agreements will be utilized with Federal agencies. These agreements shall be in accordance with the Economy Act of 1932, as amended, 31 U.S.C. 1535, and the Federal Acquisition Regulations and related OMB Circulars.

Subpart C – Roles and Responsibilities

4XX.20 Reserved.

4XX.21 Reserved.

4XX.22 NRCS State Conservationists and Directors of the Pacific Basin and Caribbean Areas.

NRCS State Conservationists and Directors of the Pacific Basin and Caribbean Areas are responsible for:

- A. Ensuring that technical services are obtained in a cost-effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.
- B. Providing contracting opportunities for small businesses, small disadvantaged businesses (Section 8(a)), and women-owned small businesses in accordance with procurement preference goals.

4XX.22 NRCS District Conservationists (and equivalent).

**Part 4XX – USDA NRCS TECHNICAL SERVICE PROVIDER
MEASUREMENT AND ACCOUNTABILITY SYSTEM**

Subpart A – Purpose and Authorities

4XX.0 Purpose.

- This part provides policy and guidance regarding the measurement and accountability system, quality assurance, and compliance with regulatory requirements regarding Technical Service Providers.

4XX.1 Reserved.

Subpart B – Policy

4XX.10 Measurement and Accountability System

A. A national NRCS measurement and accountability system will be used to measure and monitor the overall use, performance, and accomplishments of Technical Service Providers.

4XX.11 Quality Assurance.

A. NRCS is responsible for Technical Service Provider quality assurance. Agency policy and guidance for technical services provided is found in the General Manual, GM 340, Part 404, and GM 450, Part 407.

B. NRCS will respond to technical service concerns or problems when notified of such issues by program participants, other entities, or other agencies.

C. NRCS will be proactive in identifying and resolving issues in order to proceed with efficient and effective implementation of the Technical Service Provider process.

D. Quality assurance reviews will determine if the technical service provided meets policy, procedures, standards, specifications, and other requirements.

E. The procedure for conducting quality assurance reviews and spot checks for technical services provided by Technical Service Providers will be addressed in each State Quality Assurance Plan. The State Quality Assurance Plan will include more stringent quality assurance safeguards as the magnitude or complexity of the technical services provided increases and as the risk increases for environmental damage and negative environmental impacts from practice failure.

F. NRCS will also conduct quality assurance reviews of Technical Service Provider certification applications as follows.

(1) Nationally, a representative sample will be pulled from TechReg throughout the year and provided to the NRCS State Conservationist. NRCS will review the information submitted by the Technical Service Provider to ensure that the Technical Service Provider meets the required certification elements. This sample will not include those certified based on the recommendation of an approved recommending organization.

(2) States may supplement this nationally selected random sample with additional reviews. Additional reviews may encompass Technical Service Providers certified in categories considered more complex, complaints by the public, anomalies in the application, knowledge of the applicant by the State Technical Service Provider Coordinator or other NRCS employee, etc.

(3) For Technical Service Providers applying for certification or certified in more than one state, the general information will be checked by NRCS in the state where the Technical Service Provider is located. State-specific information will be checked by NRCS in each state the Technical Service Provider is applying or is certified to provide technical service.

(4) The data base will allow the review to be conducted and documented consistently by each reviewer so that state, regional, and national tracking can be accomplished to identify common deficiencies across states and regions. This will allow NRCS to identify certification criteria which may need to be strengthened or clarified.

(5) Certification applications will also be reviewed during quality assurance reviews and spot checks of technical services provided.

4XX.12 Compliance with Regulatory Requirements.

A. The responsible party or agency will carry out compliance with all applicable Federal, State, and Tribal laws, rules, regulations and local requirements in the course of delivering or receiving technical services.

B. Technical Service Providers shall work with program participants to provide information to NRCS, for those technical services that require such activity, to enable NRCS to carry out its responsibilities to comply with environmental requirements.

C. NRCS retains responsibility for all decision-making and consultation required of Federal agencies related to compliance with several resources protection laws, including but not limited to the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA).

D. Technical Service Providers contracted with NRCS to gather information to enable NRCS' compliance with the NHPA will meet the Secretary of Interior's professional qualification standards as specified in Section 112(a)(1)(A) of the Act and in the implementing regulations for section 106 of the NHPA at 800.2(a)(1) and 800.2(a)(3). Such TSPs shall be used in accordance with 800.2(a)(3) ("Use of Contractors").

E. Technical Service Providers shall work with the program participants to help ensure that all approvals, authorities, rights, permits, and easements necessary for the implementation, operation, and maintenance of conservation practices have been obtained prior to practice installation.

Subpart C – Roles and Responsibilities

4XX.20 Reserved

4XX.21 Quality Assurance

A. Reserved.

B. Reserved.

C. State Conservationists/Directors of the Pacific Basin and Caribbean Areas will:

(i) Identify and elevate to the Chief any inherent concerns or problems that arise in relation to the recommending organization’s certification program. NRCS will work with a recommending organization to modify and correct deficiencies in their certification program. NRCS may terminate any agreements or memorandums of understanding with the recommending organization if the deficiencies are not addressed.

(ii) Initiate the decertification process for any Technical Service Provider who falsifies documentation on the certification application, fails to act responsibly in providing technical services, including meeting NRCS standards and specifications, violation of the terms and conditions of the Certification Agreement, or any other cause of a serious or compelling nature.

4XX.22 Compliance with Regulatory Requirements.

A. Reserved.

B. Reserved.

C. Reserved.

D. USDA Program Participants are responsible for:

(1) Obtaining all approvals, authorities, rights, permits, and easements necessary for the implementation, operation, and maintenance of conservation practices prior to practice installation.

(2) Complying with all USDA program requirements.

E. Technical Service Providers

Part 4XX – Conservation Program Appeals and Mediation

Subpart A – Purpose, Authorities, Rules and Regulations, and Related NRCS Policy

4XX.0 Purpose.

This Part contains policy on conservation program appeals and mediation and related roles and responsibilities.

4XX.1 Authorities, Rules and Regulations, and Related NRCS Policy.

A. Statutory authorities include:

- (1) 7 U.S.C. 6991 *et seq.*, Public Law 103-354, Title II, The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994;
- (2) Public Law 104-320, Administrative Dispute Resolution Act of 1996;
- (3) Public Law 102-354, Administrative Procedure Technical Amendments Act of 1991; and
- (4) Public Law 101-552, Administrative Dispute Resolution Act of 1990.

B. Rules and Regulations include:

- (1) 7 CFR 614, NRCS Appeals and Mediation Procedure;
- (2) 7 CFR 780, FSA Appeals Procedure;
- (3) 7 CFR 11, NAD Appeals Procedure; and
- (4) 7 CFR 1946, Mediation.

C. Related NRCS policy:

- (1) Title 440, Conservation Programs Manual, Part 510, Appeals and Mediation; and
- (2) Title 110, General Manual, Part 404, Alternative Dispute Resolution.

Subpart B – Policy

4XX.10 Conservation Program Appeals and Mediation.

A. Any person that receives an adverse decision or determination resulting from assistance received for a USDA or NRCS conservation program shall be provided appeals and mediation rights through the appeals process specific to the conservation program being utilized, regardless of the source of the technical service.

B. The following examples are provided as clarification:

(1) Example 1.

A participant in the Environmental Quality Incentives Program (EQIP) hires a Technical Service Provider (TSP) to develop the required documents (conservation plan and evaluation of resources) needed to apply for EQIP. The documents are accepted by the participant and presented to NRCS for application of the evaluation and ranking criteria. The information provided and applied to the ranking system does not return a rank high enough to qualify for funding of a contract. NRCS issues an adverse decision to the participant denying funding of the proposed EQIP contract. The participant must be offered appeal and/or mediation rights of the NRCS adverse decision to deny funding of the EQIP contract. The issue(s) in the appeal would then be:

Did NRCS correctly apply the ranking and evaluation criteria to the material(s) submitted by the participant and as prepared by the TSP?

Did NRCS correctly deny the participant an EQIP contract?

Since the initial information submitted by the participant was developed by a third party (the Technical Service Provider) and accepted as correct by the participant, the issues in the appeal or mediation session would not include any adjudication of those issues. Adjudication of the materials prepared by the Technical Service Provider would not be subject to the NRCS or USDA appeals and mediation process.

The program participant is the appellant. The TSP provider may provide testimony and evidence in the appeal.

(2) Example 2.

NRCS held a signup for the Wetlands Reserve Program and utilized the services of a Technical Service Provider to evaluate the offered acreages. During the evaluation, the Technical Service Provider provided information on the size, configuration, and functions and values of the proposed easement areas. NRCS then applied the ranking and evaluation criteria to the offered

acreages. NRCS issues an adverse decision to the participant denying funding of the proposed WRP easement. The participant must be offered appeal and/or mediation rights of the NRCS adverse decision to deny funding of the WRP easement. The issue(s) in the appeal would then be:

Did the information as assembled by the Technical Service Provider at the behest of NRCS represent a correct analysis of the proposed easement area?

Did NRCS correctly apply the ranking and evaluation criteria to the material(s) as prepared by the Technical Service Provider?

Did NRCS correctly deny the participant a WRP easement?

Since the Technical Service Provider has been hired (by contract, cooperative agreement, or other means) by NRCS to perform a contract service, all materials prepared by the Technical Service Provider would be subject to the NRCS or USDA appeals and mediation process.

The program participant is the appellant. The Technical Service Provider, as a contractor for NRCS is part of the list of witnesses for the agency and may provide testimony and/or evidence in the appeal on behalf of NRCS in support of the adverse decision.

4XX.11 Reserved.

Subpart C – Reserved

Part 4XX – Technical Assistance Waste, Fraud, and Abuse

Subpart A – Purpose, Authority, and Regulation

4XX.0 Purpose.

This Part states NRCS policy regarding technical assistance waste, fraud, and abuse and roles and responsibilities for guarding against and for reporting such activities.

4XX.1 Authority and Regulation.

- A. The Commodity Credit Corporation (CCC) Charter Act, 15 U.S.C. Sec.714m, Crimes and Offenses, describes the crimes and offenses, and the punishment thereof, relating to Commodity Credit Corporation business, including the use of false statements, embezzlement, larceny, and conspiracy to commit offense, and the general statutes of applicability.
- B. USDA Departmental Regulation (DR), DR 1110–2, Management Accountability and Control, establishes Department-wide policy for all agencies and staff offices to improve the accountability and effectiveness of USDA programs and operations through the use of sound systems of internal and management controls to reasonably ensure that programs and resources are protected from waste, fraud, and mismanagement.

Subpart B – Policy

4XX.10 Zero Tolerance.

NRCS has a zero-tolerance policy regarding waste, fraud, and abuse.

4XX.11 Instructions for Contacting the USDA Office of Inspector General..

All NRCS offices will prominently display instructions for contacting the USDA Office of Inspector General (OIG), Investigative Branch, to aid a NRCS employee and/or program participant in making appropriate contact(s) in reporting an act(s) of waste, fraud, and abuse.

4XX.12 Technical Service Providers.

Technical Service Providers who engage in waste, fraud, and abuse will be subject to the decertification process and other penalties as allowed by law.

4XX.13 Erroneous Representation Affecting Program Determination.

Any person who NRCS determines to have erroneously represented any fact affecting a program determination made in implementing the program shall not be entitled to any payment and shall refund all payments received.

Subpart C – Roles and Responsibilities

4XX.20 Reserved

4XX.21 NRCS State Conservationists/Directors, Pacific Basin and Caribbean Areas.

NRCS State Conservationists and Directors of the Pacific Basin and Caribbean Areas are responsible for ensuring that each case, where an employee, program participant, or Technical Service Provider, is suspected of fraud, is turned over to the USDA OIG, Investigative Branch.

4XX.22 NRCS Employees.

All NRCS employees are responsible for:

- A. Safeguarding against waste, fraud, and abuse; and
- B. Understanding the actions to take when there is suspicion of waste, fraud, and abuse and how to contact the USDA Office of Inspector General (OIG), Investigative Branch.

4XX.23 Technical Service Providers.

All Technical Service Providers are responsible for reporting waste, fraud, and abuse to the USDA Office of Inspector General (OIG), Investigative Branch.

4XX.23 Program Participants.

All program participants are responsible for safeguarding against waste, fraud, and abuse.