



July 18, 2003

**OKLAHOMA BULLETIN NO. OK120-3-9**

**SUBJECT: ADS – Guidance on Freedom of Information/Privacy Act Policy in Working with Conservation District Boards**

**Purpose:** To provide new guidance in reviewing individual conservation planning and/or conservation program documents with conservation districts.

**Expiration Date:** September 30, 2003

The Natural Resources Conservation Service (NRCS) has worked with the Oklahoma Conservation Commission (OCC) to address procedures to follow reviewing individual conservation plans, conservation program contracts, and related information with conservation districts. NRCS has a long-standing relationship with OCC and conservation districts and works closely with conservation districts in delivery of conservation technical assistance on private lands. A key component of this relationship is the sharing of conservation planning and conservation program contract information. New procedural policies are needed to address new Freedom of Information Act (FOIA) and Privacy Act requirements specified in the Farm Security and Rural Investment Act of 2002 that prohibits the release of certain information. Conservation districts must abide by Oklahoma Open Meetings and Records Act policies which require the release of information openly discussed in regular conservation district board meetings. The open release of the conservation planning and conservation program records specific to NRCS' assistance to private individuals, conflicts with revised FOIA policies included in General Manual 120, Part 408. A specific exemption within the Oklahoma Act (Paragraph 24A.13) will allow for the conducting of business with the conservation districts, relative to these records, without public disclosure.

It is imperative that NRCS continue sharing planning and contract information with conservation districts to assist them in addressing local priorities through our work with the local people. In order to maintain open communication regarding assistance to individuals, NRCS and OCC have agreed that planning and contract information will be discussed in Executive Session of conservation districts each month. This will maintain the level of confidentiality required for NRCS employees and conservation districts managing individual case file and program related documents. OCC has provided direction to the conservation districts for managing the conservation district board agenda, including NRCS conservation plan and program action. District conservationists must work closely with conservation districts to assist them in developing an agenda that lists plans and/or contracts which need to be discussed with conservation districts in Executive Session. These lists must be posted with the agenda to meet Oklahoma's Open Meeting requirements. The individual's name and applicable conservation program will be included on the conservation district agenda or addendum.

NRCS personnel must not provide the details or contents of any conservation plan and/or contract information to the district in general session. It is imperative that full discussions of this nature regarding individual conservation plans and/or contracts be conducted in Executive Session. It is the NRCS district conservationist's responsibility to ensure these documents and discussions are not conducted in a manner that would facilitate their open release to the public.

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DIST: AE

District conservationists should review Oklahoma Bulletin OK120-3-5 and the revised FOIA policy located at the following web site:

[http://policy.nrcs.usda.gov/scripts/lpsiis.dll/GM/GM\\_120\\_408\\_C.htm](http://policy.nrcs.usda.gov/scripts/lpsiis.dll/GM/GM_120_408_C.htm)

DC's are encouraged to work with conservation district directors to help them understand the need for protecting individual privacy information as outlined in the new policy.

The following information has been sent to conservation districts by OCC to assist districts in establishing Executive Session agendas that will protect the privacy of individuals, while allowing active discussion of local priorities. OCC email to districts:

*"The following memo and attached chart will be going in the mail Monday morning. I wanted you to have this in time for your July board meeting. This guidance should be put in place starting with your July meeting.*

*In order for there to be continued conservation district input into NRCS conservation plans and contracting documents, the following guidance must be followed when reviewing these items in board meeting. If there are any questions, please do not hesitate to call.*

*With the passage of the 2002 Farm Bill, new changes in the processing of Freedom of Information Act (FOIA) requests became effective. The bill mandates that certain information provided by individuals to NRCS or to contractors or consultants of NRCS is not considered public information and is therefore not releasable to the public.*

*This new mandate will change the way you conduct business during a local board meeting, as well as how you respond to requests for information. This memo is to assist you in complying with the requirements at your local district board meetings. A separate memorandum will be forthcoming in order to assist you with records requests.*

*Currently, individual conservation plans and contractual documents are being reviewed, revised, approved, or canceled in open session. Because of the new privacy requirements, these plans and documents will now need to be reviewed in executive session. The following is recommended language for your board meeting agenda:*

- 1. Vote in open session on whether to enter executive session as authorized by Title 25 Section 307 (B)(7) to discuss and review EQIP plan and contract (insert appropriate program here i.e. WRP, WHIP etc.) for Jane Doe (list names of all individuals being reviewed), and if executive session is approved, designation in open session of person to keep minutes in executive session.*
- 2. Executive Session to discuss and review plans and contracts as described in Item 1.*
- 3. Discussion and possible action (if any) in open session to approve, revise, or cancel conservation plans and contractual documents.*

*In light of these new requirements, it will be imperative that the district board and staff communicate and work closely with NRCS staff to develop each month's agenda. The district conservationist will need to provide agenda items by program and named individual to the secretary in a timely fashion in order to meet agenda posting requirements.*

*Attached is a chart outlining the different conservation programs and the potential actions that may be taken by a district board. NRCS needs and wants continued input from conservation district boards related to the conservation programs within the Farm Bill. By following these guidelines, districts and NRCS will be in compliance with the state's open meeting law and the federal Freedom of Information Act."*

Questions concerning the handling of individual conservation plans and/or conservation program documents should be directed to the appropriate ASTC(FO), Kevin Norton, ASTC(P), or Les Conner ASTC(O).

/s/ (Kevin D. Norton – Acting for)

M. DARREL DOMINICK  
State Conservationist

Attachment

### NRCS Conservation Programs and Potential Actions by Conservation District Boards

Programs	Application	Determinations and data	Ranking List	Conservation Plan/Revision	Contract Administration	Payment Application	Status Reviews	Compliance Determinations
Conservation Reserve Program	R	R and C	N/A	A	R and C	N	R and C	R and C
Environmental Quality Incentives Program	R and P	R and A	R and A	A	R and C	N	R and C	R and C
Farm and Ranch Lands Protection Program	R	R and C	R and C	A	R and C	N	N	R and C
Grassland Reserve Program	R	R and C	R and C	A	R and C	N	R and C	R and C
Highly Erodible Land	R and P	N/A	N/A	A	R and C	N	R and C	R and C
Wetlands Conservation	R	N/A	N/A	A	R and C	N	R and C	R and C
Wetlands Reserve Program	R	R and C	R and C	A	R and C	N	R and C	R and C
Wildlife Habitat Incentives Program	R	R and A	R and C	A	R and C	N	R and C	R and C
Conservation Technical Assistance				A				
Watershed Land Treatment Contracts	R	R and C	R and C	A	R and C	N	R and C	R and C
Great Plains Conservation Program	R	R and C	R and C	A	R and C	N	R and C	R and C
Forestry Incentive Program	R	R and C	R and C	A	R and C	N	R and C	R and C

**Possible Actions that a board may take related to NRCS programs**

R = Review - A review of applications, plans, status reviews would all be conducted in Executive Session

C = Comment, recommendation, oversight would be given during Executive Session

A = Approval action - Action to approve plans would be taken in open session after review in Executive Session

N = No action needed by district board

P = Priorities - Prioritizing individual client applications would be done in Executive Session

N/A = Not Applicable to the program