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Part 518 — Compliance Reviews

Subpart A — Preparation for Conducting Compliance Reviews

518.01 General Information

a Compliance Review General Policy

Policy for Compliance Reviews is set forth in this part of the NFSAM. Compliance Reviews:

- Compliance reviews are based on a national sample of tracts. Each compliance review is a technical review of an entire tract to determine conformance with the Highly Erodible Land Conservation and Wetland Conservation provisions of the Food Security Act of 1985.
- Tracts will be selected randomly. The number of tracts selected will be sufficient to assess accurately compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of the Food Security Act of 1985 at the national level. Tract selections are based upon criteria set forth in NFSAM Part 518, Subpart A, Section [518.02](#). Annually, the national sample tract lists will be provided to the State Conservationists by December 31.
- When tracts selected for a Compliance Review are located in a county selected for a State Quality Review; the conservation plans for these tracts will be reviewed as part of the State Quality Review.
- Supplemental tracts for Compliance Reviews may be added by the State Conservationist.
- Compliance is a measure of client conformance with specific program rules and regulations and involves the process of comparing the activities of a client with the requirement of a plan, contract, or standard.
- USDA agencies are responsible for ensuring that a person complies with Highly Erodible Land Conservation and Wetland Conservation provisions of the Food Security Act of 1985 before providing program benefits (7 CFR 12.6).

b Compliance Review Assignments

The State Conservationist shall determine who will conduct compliance reviews within each State, as set forth in the following paragraphs:

- All employees responsible for conducting Compliance Reviews shall have the required knowledge, skills, and abilities to assess the status of both highly erodible land and wetland conservation compliance. If there are currently no employees in a county with the requisite training and knowledge, skills, and abilities to perform Compliance Reviews, the Area or State Conservationist shall assign another employee the responsibility for that specific county.
- State Conservationists and Directors, Caribbean and Pacific Basin, are responsible for assigning staff to conduct Status Reviews within each State using methods that comply with this policy, NFSAM Part [518](#), and the regulatory provisions of 7 CFR Part 12. The State Conservationist may utilize either of the following approaches for staffing compliance reviews:
 - State or Area-Assigned Compliance Review Teams.
(180-V-NFSAM, Fourth Ed., Amend. 1, April 2004)

- Employees from adjacent counties.
- A combination of (1) and (2).
- Ensuring Compliance Review procedures are consistent with the NFSAM, Parts 518 and 519 and the Quality Control Manual.
- Assuring consistent and uniform highly erodible land and wetland determinations and/or delineations within the State and between adjacent States.
- Assuring that actions taken pertaining to requests for variances are executed and completed within the specified timeframes.
- Assuring that execution of policy is consistent and uniform within the State and among adjacent States.
- Assuring that corrective action is taken to address deficiencies found in quality reviews.
- Determining if additional reviews are required.
- Providing training and follow-up to correct deficiencies.
- Identifying potential cases of fraud, waste, and abuse. (See guidance in NFSAM, Part 520, Subpart A, and Section 520.08.)
- Effective with the passage of the Farm Security and Rural Investment Act of 2002, May 13, 2002, (the 2002 Farm Bill), Public Law 107-171, Section 1211(b) and Section 1221(e), only an NRCS employee has the authority to determine if a USDA participant is in compliance with the HEL and Wetland Conservation.

c Notification to the USDA Participant

The NRCS employee shall notify in writing, the USDA participant when a tract under his or her control has been selected for a compliance review. Notification shall not be more than 30 days prior to the review, or less than 15 days prior to the compliance review.

The landowner and/or operator should be invited, but not required, to participate in the compliance review, unless the compliance review is for purposes of reinstatement.

d Correct Timing for an Official Compliance Review

The State Conservationist shall determine when compliance reviews will be conducted. The following criteria shall be considered when determining the schedule for conducting the field compliance reviews—

- Field reviews shall be conducted at a time that is best to evaluate the conservation practices that make up the approved conservation system.
- The critical erosion period for either wind or water of the crop year for the annually tilled crop and the conservation system or conservation practice being reviewed.
- All compliance reviews must be completed by no later than November 15th of each year.
- Whistleblower complaints must be investigated within 45 days of receipt of the complaint. (See NFSAM, Part 520, Subpart C, Paragraph [520.04](#)).

e Explanation of a “Crop Year”

A crop year is the year in which a single crop is harvested. The crop year ends when that crop is harvested. When multiple crops are grown in a year, the crop year ends when the last crop is harvested. When a cover crop or fallow period is part of the cropping system, these time periods are considered to be part of the next crop year.

Example: In a wheat/fallow cropping system, the crop year begins immediately following the harvest of the preceding wheat crop and includes the fallow period, the planting growth and harvest of the next wheat crop.

The appropriate time for conducting the compliance review is immediately following the planting of the new wheat crop.

An NRCS decision of non-compliance with the HEL provisions is effective for the entire crop year. NRCS shall identify the crop year for which the violation is applicable.

f Compliance Review Following a Variance or Exemption

Compliance reviews on tracts conducted in the year following a variance or exemption may be limited to either of the following:

- A review to determine if the reason the variance was granted has been alleviated or corrected.
- A review to determine if the USDA participant is using an acceptable conservation system.

Note: A complete compliance review does not need to be repeated unless determined by the DC or the tract is again selected through the random process.

g Conservation System Revision

NRCS will not provide technical assistance for conservation planning or conservation system modification or revision until after the compliance review has been completed, unless the following situations apply—

- Planned structural conservation practices are scheduled to be installed during the same crop year as the review, but after the review has taken place.
- Existing structural conservation practices are in need of maintenance.
- The compliance review is completed when on-site field work has been performed.

A conservation system is being applied that meets the FOTG requirements, but has not been officially documented in the USDA participant's case file.

518.02 Tract Selections

a Tract Selections for the National Sample

Tract selections are based on the following criteria—

- USDA payments subject to the HELC/WC provisions that were received during the past crop year, where a significant benefit level has been attained.
- Stratification of areas where annual crop production is high and participation in USDA programs subject to the HELC/WC is of a significant level.
- Tracts having potential HELC characteristics.
- Tracts having potential wetland characteristics.
- Tracts with CRP contracts, early contract termination, and contract expiration.
- Tracts with other significant characteristics where potential violations might be expected to occur.
- Where 20 percent or more of the tracts in a previous year's compliance review have been determined to be NA, PV, (see paragraph [518.11\(f\)](#)) or given a variance, an appropriate number of tracts will automatically be added to the national sample for that State.

Annually, the national sample tract lists will be provided to the State Conservationist by December 31st.

b Tract Selection Exemption from FOIA

The listing of tracts selected for current year compliance reviews is an agency internal procedure and is exempt from disclosure under the [Freedom of Information Act](#) (FOIA) under exemption b(2). This provision exempts internal matters of a substantial nature, the disclosure of which would risk the circumvention of a statute or agency regulation.

c Mandatory Tract Selections to Be Added to the National Sample at the Local Level

The following tract selections and/or additions are to be made locally—

- Tracts for five percent of all FSA Farm Credit Loans.
- Tracts owned by USDA (FSA and NRCS) employees. Tracts will be reviewed at least once every three years. (See GM 340, Part 413 for specific policy.)
- Tracts referred by other USDA agencies (See also NFSAM Part 520, Subpart C, Section [520.04](#)).
- Tracts of USDA participants requesting reinstatement.
- Tracts where a variance or exemption was granted the previous year.
- CRP contracts early contract termination.

Note: Where a variance was provided because of a disaster event, those tracts do not need to be added to the following year's random compliance review list.

d Optional State and Local Tract Selections

Prior to November 1st, Regional and State Conservationists may request that NHQ add tracts to the national sample list being drawn for any of the following reasons:

- Findings from the previous year's compliance review or quality assurance review.
- Either a high or low percentage or number of NA or PV determinations from the current or previous year's compliance review findings.

- A high percentage or number of recurring variances. (Exception: variances issued for a disaster).

The STC and/or the RC will consult with the Director, with Operations Management and Oversight Division (OMOD), to determine the number of additional compliance reviews to be performed. The Director, OMOD will select the additional tracts.

e Tract Selection Category Codes

Compliance review tracts shall be coded as follows:

R — Tract selected nationally by NRCS from the National Computer Center based on the random sample (either R or W tracts).

U — Tract owned or operated by a USDA (FSA or NRCS) employee (See NFSAM paragraph [518.02\(c\)](#)).

S — Tract added due to a prior-year variance or exemption.

A — Tract added to the compliance review list as follows:

- Reinstatement has been requested by a USDA participant.
- A tract has been referred by another USDA agency.
- Prior-year potential violations that were observed by NRCS ((when the 45-day/1-year technical assistance variance rule (NFSAM Part 520, Subpart B, Section [520.11](#)) was applied)).
- Tracts reported through a whistleblower complaint (See also NFSAM Part 520, Subpart C, Section [520.04](#)).

518.03 Review of and Adjustment to the Compliance Review List

a Farm and/or Tract Number Reconciliation

Upon receipt of the compliance review tract list at the local level, the District Conservationist shall review and reconcile tract and/or farm number discrepancies with the local FSA office.

Tracts and farms that have been assigned new farm and/or tract numbers by FSA will be changed to the new farm and/or tract numbers on the compliance review database, including the current USDA participant name(s), address(es), and other contact information.

b Tracts Previously Determined “NA” or “CW+YR”

If a tract on the current year’s compliance review list was previously determined as “Not Actively Applying”, (NA), or “Converted Wetland + Year”, (CW+YR), and have not been through the reinstatement process, then a replacement tract shall be selected.

Reconcile this data with FSA to ensure that their violation flags are set correctly. Ensure that the USDA participant has been notified of the HEL or WC violation, as well as the appropriate appeal and mediation rights.

c Replacing Selected Tracts

Tracts on the national compliance review list must also be replaced if any of the following criteria are met—

- No USDA benefits were received for this tract for the past cropping year. The tract is not a part of a farming concern that has received USDA benefits in the past cropping year.

Example: The tract is currently listed as a being part of a farming concern that had received USDA benefits in the prior crop year on the NCC Kansas City, Missouri database. However, that database had not been updated so as to reflect the change of compliance and separation of the tract from the original farming concern.

- There are no HEL fields and no areas determined to be a wetland; or there are no areas that would be an obvious wetland.
- There are HEL fields, but no annually tilled crops have been or are currently being produced on the HEL fields and no areas determined to be a wetland; or there are no areas that would be an obvious wetland.

Any tracts meeting these criteria are to be replaced with the next sequentially numbered tract in the county.

d Review to Determine “Conflict of Interest”

The Designated Conservationist shall review the completed compliance review list to determine if there might be a potential conflict of interest for the NRCS employee assigned to perform the compliance reviews. A potential conflict of interest may be, but is not limited to the following criteria:

- Tracts owned or operated by the employee, family members, personal friends, Conservation District officials, or any other individual that could be considered as being a conflict of interest.
- Tracts previously owned or operated by the employee or family members where circumstances might imply or interfere with an impartial review of the tract.

Example: Foreclosure on a tract of land or loss of a contract bid for farming the land.

Where a potential or actual conflict of interest is found to exist, contact the next level line officer to arrange for assistance in completing reviews of those tracts.

e Employee Farming Interest Report

All employees are required to submit form NRCS-CPA-1 (see NFSAM, Part 518, Subpart C, Section [518.23](#)) to the State Conservationist by no later than October 15th

- Farms and tracts owner or operated by the employee or family member.
- Conservation program contracts under the employee's control, or that of a family member.

518.04 Exemptions from Compliance Reviews (for HEL Components Only)

a Conditions for Exemptions of a Tract or Field from Compliance Reviews

NRCS may exempt the following tracts from the compliance review process, if the tract has been selected randomly and documentation in the case file supports any of the following:

- The tract has been reviewed at least once in the past two years, and found to be actively applying an approved conservation system or conservation plan. If an entire tract is exempted from the review, the DC shall request another tract selection from the Area or State Conservationist.
- Where crop residue management or use is the only practice in the conservation system or conservation plan for a specific field(s) within the tract and the USDA participant has either self-certified or provided by a technical services provider certification that the residue levels meet the requirements of the conservation system or conservation plan as specified in the FOTG.
- The USDA participant is applying a Resource Management System (RMS).

Note: Tracts exempted for reasons set forth in Paragraphs 518.04(a through c) must still be investigated for any potential WC violations.

b Documentation Requirements for Tracts Exempted from Compliance Reviews

Self-certification records shall become a part of the compliance review record in that person's case file.

Only the HEL portion of the review can be exempted for the above listed conditions. All tracts on the compliance review list, with the exception of those added for a specific purpose, must be reviewed for potential wetland violations.

c Tracts Exempted from Compliance Reviews

If an entire tract meets the criteria for exemption from the HEL portion of the compliance review, then the tract shall be coded "EX" for exemption from the HEL review. If only a field is exempted, then fully document the field exemption in the explanatory section of the compliance review tool, and code the tract with the appropriate compliance review code for the HELC portion of the compliance review based on the remainder of the field compliance review.

The compliance review information for the review of potential WC violations shall be completed and appropriately coded.

d Partial Review of a Tract

Compliance reviews may be limited to a partial review of the tract if the following criteria apply—

- A compliance review is being conducted as a result of a variance being granted in the prior crop year. The compliance review may be limited to the field or practice for which the variance was granted. If conditions warrant, the DC may elect to review the entire tract.
- The HEL review has been exempted due to any of the reasons listed in paragraphs [518.04](#)(a through c) above. A review of the tract will be conducted for any potential wetland violations only.

e Exemptions for Widespread Weather Variances

Tracts where a variance was granted due to a disaster do not have to be included on the following year's compliance review list, unless other conditions for a specific tract prevail.

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Part 518 — Compliance Reviews

Subpart B — Conducting Compliance Reviews

518.10 Conducting Compliance Reviews

a Compliance Review Database

A web-based application, Food Security Act (FSA) Compliance Reviews has been developed to record, transmit, and store compliance review information. This application, as well as the instructions for use is a part of the NRCS [Integrated Accountability System](#). The Compliance Review program is used by NRCS employees to record Compliance Status Reviews. The User Guide is a part of the web-based application. (See <http://ias.sc.egov.usda.gov/help/csr/docs/CSR.pdf>).

b Office Reviews

Compliance reviews may be conducted as stand-alone reviews or in conjunction with State Quality Reviews.

An office review of available data shall be completed prior to performing the field portion of the compliance review. The office review shall consist of the following steps:

- Review of aerial photography, slides, topographic, or other map bases to determine:
 - Fields being cropped.
 - Wetland signatures and characteristics.
 - Soil mapping.
 - Potential presence of hydric soils or hydric soil inclusions.
- Review of the original HEL and/or WC determination for accuracy.
- Review all supporting data in the case file to determine if all variances or exemptions issued have been fully reconciled.
- Evaluate the conservation system using the current version of RUSLE or WEQ.

c Field Reviews

Field reviews shall include the following components, unless exclusion has been specifically provided—

- The entire tract, regardless of the selection criteria (HEL or WC), shall be reviewed for both HEL and Wetland Conservation compliance.
- If a tract number on the random tract list has been reconstituted by FSA into two or more tracts, all the resulting tracts shall be included in the compliance review. Each separate tract shall be entered into the database separately, and coded as an “R” category.
- Review crop residue levels as per the National Agronomy Manual and/or the National Range Manual as appropriate.
- Review the cropping system actually being used, using the current version of RUSLE or WEQ.
- Review the entire tract for potential wetland violations.

Note: Assumptions of past or future year plantings used to determine compliance with the HEL provisions is not appropriate. The actual conservation system, including the cropping rotation, cultural practices, and conservation practices installed and maintained shall be the basis for the compliance review determination to be made. Where the evidence of

compliance, including a USDA participant's records, is inconclusive, do not assume compliance or non-compliance. Instead, grant a variance, if appropriate.

d Field Reviews of “Sodbuster” Crop Fields

If a sodbusted field is discovered that does not have an approved conservation system documented in a conservation plan, the field review shall be documented as follows:

- Date of the conversion from native vegetation to annually tilled cropland.
- The cropping history since the conversion from native vegetation.

In determining the conservation system being applied, use the current cropping year information and crop management history, since the date of sodbusting. The cropping sequence evaluation starts with the date of the conversion and ends at harvest of the current year.

In no case will any carryover effect of the previous native vegetation (sod or trees) be considered when calculating the predicted soil loss for the conservation system being applied.

The rotation and tillage (cropping system) that is being used on the sodbusted field(s) should be used to calculate the predicted soil loss. The predicted soil loss for sodbusted fields must be no higher than the allowable soil loss tolerance for the field.

If a sodbusting violation is discovered during the first year of conversion from native vegetation, and the soil loss (to date) is less than the soil loss tolerance for the predominant HEL soil mapping unit, there may not be enough information to determine compliance with the requirements for meeting the “no substantial increase” definition for the entire system being used. Grant the appropriate variance and schedule compliance reviews until sufficient crop management information is available to determine compliance with the conservation provisions.

e WEQ and HEL Compliance Determinations

When using WEQ for evaluating conservation system planning and implementation, the following guidelines shall be followed:

- If the conservation system was planned using the Critical Period Method of WEQ, then the conservation system implementation shall be evaluated using the Critical Period Method.
- If the conservation system was planned using the Management Period Method of WEQ, then the conservation system implementation shall be evaluated using the Management Period Method.

Note: Do not mix the use of the two WEQ calculation methods. A false evaluation will result when this is done.

518.11 Determining Compliance with the HELC/WC Provisions

a Conducting the Review

When a compliance review is conducted, the conservation system that is being used to produce the annually tilled crops at the time of the review will be documented using the compliance review tool.

b Compliance Review Documentation

Complete documentation for each tract where a compliance review is conducted will be entered in the appropriate data entry locations included in the Compliance Review Database. The database has been developed to provide adequate space for explanation and comments, as well as any other information that would support the rationale for the compliance review determination. A paper copy of the compliance review determination report for each tract may be placed in the USDA participant case file.

c Determining Compliance with the HELC/WC Provisions

In actively applying an approved conservation system or conservation plan, the following criteria must be met—

- All conservation practices are being applied and maintained in accordance with the FOTG requirements.
- The allowable soil loss from the conservation system shall not exceed the maximum allowable soil loss for the predominant highly erodible soil mapping unit in the field, as set forth in NFSAM, Part [512.01](#).
- A USDA participant is using a cropping system that is currently not included in the FOTG. Annually tilled crops (or sugarcane) are being grown with an acceptable conservation system as defined at NFSAM, Part [512.01](#) and the cropping system being used meets the minimum requirements of the FOTG.
- For reinstatement after an HEL violation, active application will be considered to be when the first crop is planted according to the conservation system agreed upon following the violation, or any revised conservation system that meets the FOTG requirements for erosion reduction for the field conditions as set forth in NFSAM, Part [512.01](#). In no case will the years of non-active application be averaged into the conservation system being implemented following reinstatement procedures.
- For NRCS to consider that a crop rotation and/or a conservation cropping sequence are being used a full cycle of the crop rotation does not need to be accomplished. When the most conserving portion of the conservation cropping sequence has been applied, the conservation system is considered to be actively applied.

Note: This does not alleviate the USDA participant's responsibility to fully implement and maintain a conservation system that will meet the HELC soil erosion reduction requirements, the FOTG requirements, and NFSAM, Part [512.01](#).

- Active application for conservation tillage systems or crop residue use or management is based on the amount of crop residue present at the prescribed time in the crop year being reviewed.
- Review all areas on the tract to ascertain compliance with the wetland conservation provisions since December 23, 1985 or November 28, 1990.

d Supporting Documentation

Supporting data, such as FSA records and the USDA participant’s records may be used where appropriate to determine if practices have been implemented. All documentation relied upon in making a technical determination not currently available in the USDA participant’s case file must be placed in the file in support of the technical determination.

e HEL Compliance and Conservation System Field Trials

If, at the end of the conservation field trial period, the conservation system under evaluation will not meet the HEL requirements, the tract will not be determined to be in violation. Rather, the USDA participant will be provided sufficient time, not to exceed 1 year in which to develop and apply a conservation system that will meet the HELC requirements.

f Compliance Review Determination Codes

The following table provides guidance for making compliance review determinations.

Code	Review Determination	Applicability and Use
AA	Actively applying a conservation system.	A conservation system is being applied and maintained that meets the HELC requirements set forth in NFSAM Part 512.01 .
AC	Actively applying a conservation system with a temporary variance for special conditions.	The USDA participant was prohibited from fully applying an approved conservation system or changed the application of a practice required in the conservation system due to any of the following reasons— Severe weather Pests Disease
AE	Actively applying a conservation system with an exemption for economic hardship.	The conservation systems were economically prohibitive to apply and maintain, as approved by the FSA County Committee and State Committee.
AG	Actively applying a conservation system with an exemption based on a good faith determination or FSA has granted a good faith determination for a converted wetland.	The FSA County Committee granted an exemption from the HELC violation by finding that the USDA participant did not deliberately violate the provisions.
AH	Actively applying a conservation system with an approved variance for a special problem.	The USDA participant is actively applying the conservation system, with the exception of one or more of the required conservation practices because of a specifically identified problem, including—

		<p>A severe physical condition or death of the farm operator or a family member that prevented the application of the full conservation system.</p> <p>Destruction of equipment or farm holdings by fire, natural disaster, or other similar occurrences.</p> <p>Special problems or situations, including NRCS error that prevented the USDA participant from applying the practice.</p> <p>Note: This variance should only be used rarely and must be fully documented as to the cause of granting the variance, especially if NRCS error is cited as the failure to apply the required conservation system.</p>
AM	Actively applying a conservation system with an approved variance for a failure to apply the required system that constitutes only a minor technical failure.	May only be used when the failure is minor in nature and does not affect the functioning of the conservation system(s) on the entire tract.
CA	Conditionally applying a conservation system.	<p>This label should only be used the compliance review cannot be finalized due to the following criteria being present—</p> <p>Major maintenance of structure measure(s) are required.</p> <p>Planned structural conservation practices are scheduled to be installed.</p> <p>Note: A compliance review will be performed in the following year when this code is applied.</p>
EX	Tract exempted from the HEL portion of a compliance review.	This label shall only be used for a tract exempted from the HEL portion of a compliance review in accordance with NFSAM Part 518, Paragraph 518.01(f) .
NA	Not applying a conservation system that meets the HELC requirements.	The USDA participant is not applying or using the required conservation system on one or more HEL fields and the conditions

		do not constitute a minimal effect.
NC	Not Conducted	No review has been conducted. An entry in the comments section is required. An additional tract selection may be required. See Section 518.03(c) .
NN	An HELC conservation system does not need to be applied.	<p>The USDA participant does not need to apply a conservation system to meet the HELC requirements due to the following—</p> <p>The field or tract is not being used to produce annually tilled agricultural commodities in the current and/or previous years.</p> <p>The field or tract does not have any land determined as being HEL or Wetland.</p> <p>The owner and/or operator do not participate in any USDA programs subject to the HELC/WC provisions.</p>
PV	Potential wetland violation.	There is a suspected wetland violation in a field or tract.
TA	<p>Actively applying a conservation system with a variance for technical assistance.</p> <p>A compliance review will be required the following year.</p>	<p>This variance may only be used as follows—</p> <p>The violation is only on HEL cropland.</p> <p>The violation was <u>not</u> found during an official compliance review or during a whistleblower review.</p> <p>The USDA participant has agreed, within 45 days of the violation to apply an approved conservation plan within one year.</p>
UA	Using an approved system.	<p>All required structural and supporting management practices and treatments are installed, operating, and maintained in accordance with the FOTG prior to and at the time of the compliance review.</p> <p>The required treatment must result in a substantial reduction or in no substantial increase in soil erosion or ephemeral gully erosion.</p>

518.12 HEL and Wetland Conservation Compliance Violation Determinations

a Notification

NRCS shall provide official notification in writing to all persons having an interest in a tract or farm within ten calendar days following an NRCS determination that a USDA participant is in potential violation of either or both the HEL or WC provisions. This notification shall follow all the requirements as set forth in the Conservation Programs Manual (CPM), Part [510](#), Appeals and Mediation, Subpart B, Title XII Conservation Program Appeals.

Copies of the notification shall be sent to the Conservation District and the FSA County Office, as appropriate.

b Completing Form FSA-569

NRCS shall request form FSA-569 from the FSA County Office within seven (7) calendar days of making a compliance violation determination, including any of the following violations:

- Not actively applying a conservation plan or conservation system
- Not using an approved conservation system.
- Denying access to the farm or tract to a USDA employee on official business.
- Violations of the wetland conservation provisions.

Form FSA-569 shall be used to:

- Provide NRCS with a document to inform FSA of the final technical determination made by NRCS.
- Provide FSA with a notice of potential non-compliance.

The completed form FSA-569 will be provided to the FSA County Office when the NRCS technical determination becomes final (See CPM, Part [510](#), Subpart B).

c Determination of Non-Compliance

Section 2002(a)(2) (Conservation Compliance) of the Farm Security and Rural Trade Investment Act of 2002, Public Law 107-171, 116 Stat. 233 set forth the following provisions:

“...The Secretary shall have, and shall not delegate to any private person or entity, authority to determine whether a person has complied with this subtitle.”

This provision of the statute affects both determinations of non-compliance for HELC (16 U.S.C. 3811(b) and WC (16 U.S.C. 3821(e)). Therefore, no person other than an NRCS employee may provide notification to FSA of a potential violation of the HELC/WC provisions for any reason. (See NFSAM, Part 518, Subpart C, Exhibits, Sections [518.21](#) and [518.22](#)).

d Appeals Process

When NRCS issues a technical determination that could be considered to be adverse to the USDA participant, appeal and mediation rights must be provided. The appeals and mediation process for Title XII programs is set forth in the CPM, Part [510](#).

e Equitable Relief

A USDA participant may be eligible for Equitable Relief, as set forth in Section 1613 of the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill), Public Law 107-171,

(180-V-NFSAM, Fourth Ed., March 2003)

May 13, 2002 for violations of specific NRCS conservation programs. The NRCS Equitable Relief Policy is set forth in the CPM, Part [509](#), Equitable Relief.

Equitable Relief is not applicable to either HELC or WC potential violations.

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- 518.21 [HELC Program Ineligibility Determination Authority, 16 U.S.C. 3811\(b\)](#)
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- 518.23 [NRCS-CPA-1, Employee Report of Farming Interests](#)

518.20 **Reserved**

- (C) under normal circumstances does support a prevalence of such vegetation. For purposes of this Act, and any other Act, this term shall not include lands in Alaska identified as having high potential for agricultural development which have a predominance of permafrost soils.¹²⁰¹⁻⁵
- (b) The Secretary shall develop—
- (1) criteria for the identification of hydric soils and hydrophytic vegetation; and
 - (2) lists of such soils and such vegetation.

SUBTITLE B—HIGHLY ERODIBLE LAND CONSERVATION

SEC. 1211. [16 U.S.C. 3811] PROGRAM INELIGIBILITY.¹²¹¹⁻¹

(a) IN GENERAL.—Except as provided in section 1212, and notwithstanding any other provision of law,¹²¹¹⁻² any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominate, or designates land on which highly erodible land is predominate to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity, as determined by the Secretary shall be ineligible for—¹²¹¹⁻³

(1)¹²¹¹⁻⁴ as to any commodity produced during that crop year by such person—

(A)¹²¹¹⁻⁵ contract payments under a production flexibility contract, marketing assistance loans, and any type of price support or payment made available under the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;

(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(C)¹²¹¹⁻⁶ a disaster payment; or

(D)¹²¹¹⁻⁷ a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law adminis-

¹²⁰¹⁻⁵The last sentence was added by the Urgent Supplemental Appropriation Act, 1986, P.L. 99-349, 100 Stat. 714, July 8, 1986.

¹²¹¹⁻¹Sec. 2002(a)(1) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 233, May 13, 2002, amended this sec. by striking the section heading and all that follows through “Except as provided in” and inserting the sec. heading and all that follows through “Except as provided in”.

¹²¹¹⁻²Sec. 311(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-982, 110 Stat. 1004, April 4, 1996, amended this section by striking “following the date of enactment of this Act.”.

¹²¹¹⁻³Sec. 1411(1) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3569, Nov. 28, 1990, revised the first sentence by adding the phrase “, or designates” through “determine by the Secretary”.

¹²¹¹⁻⁴Sec. 311(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this paragraph by striking former subparagraph (C) and by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively. For the previous version of this paragraph, see pp. 5-3 and 5-4 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

¹²¹¹⁻⁵Sec. 311(2)(A) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended subparagraph (A) in its entirety.

¹²¹¹⁻⁶Sec. 311(2)(C) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this subparagraph by striking “made under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), under section 132 of the Disaster Assistance Act of 1989 (7 U.S.C. 1421 note), or under any similar provision enacted subsequent to August 14, 1989”.

¹²¹¹⁻⁷Sec. 1411(4) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3569, Nov. 28, 1990, deleted “or” after the semicolon.

tered by the Consolidated Farm Service Agency,¹²¹¹⁻⁸ if the Secretary determines that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible land;

(2)¹²¹¹⁻⁹ a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) during such crop year for the storage of an agricultural commodity acquired by the Commodity Credit Corporation; or

(3)¹²¹¹⁻¹⁰ during the crop year—

(A) a payment made pursuant to a contract entered into under the environmental quality incentives program under chapter 4 of subtitle D;

(B) a payment under any other provision of subtitle D;

(C) a payment under section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 and 2202); or

(D) a payment, loan, or other assistance under section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 and 1006a).

(b)¹²¹¹⁻¹¹ **HIGHLY ERODIBLE LAND.**—The Secretary shall have, and shall not delegate to any private person or entity, authority to determine whether a person has complied with this subtitle.

EXEMPTIONS

SEC. 1212. [16 U.S.C. 3812] (a)¹²¹²⁻¹(1) During the period beginning on the date of the enactment of this Act and ending on the later of January 1, 1990, or the date that is 2 years after the date land on which a crop of an agricultural commodity is produced was mapped by the Soil Conservation Service for purposes of classifying such land under the land capability classification system in effect on the date of enactment of this Act, except as provided in paragraph (2), no person shall become ineligible under section 1211 for program loans, payments, and benefits as the result of the production of a crop of an agricultural commodity on any land that was—

(A) cultivated to produce any of the 1981 through 1985 crops of an agricultural commodity; or

(B) set aside, diverted or otherwise not cultivated under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity.

(2) If, as of January 1, 1990, or 2 years after the Soil Conservation Service has completed a soil survey for the farm, whichever is later, a person is actively applying a conservation plan,¹²¹²⁻² such person shall have until January 1, 1995, to comply with the plan

¹²¹¹⁻⁸ Sec. 311(2)(D) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this subparagraph by striking “Farmers Home Administration” and inserting “Consolidated Farm Service Agency”.

¹²¹¹⁻⁹ Sec. 1411(4) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3569, Nov. 28, 1990, deleted the period and inserted “; or”.

¹²¹¹⁻¹⁰ Sec. 311(3) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 982, April 4, 1996, amended this paragraph in its entirety. For the previous version of this paragraph, see p. 5-4 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

¹²¹¹⁻¹¹ Subsec. (b) added by sec. 2002(a)(2) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 233.

¹²¹²⁻¹ Sec. 1412(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3569, Nov. 28, 1990, added paragraphs (3) and (4).

¹²¹²⁻² Sec. 301(d)(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 981, April 4, 1996, amended this paragraph by striking “that documents” and all that follows through “by the Secretary”. For the previous version of this paragraph, see pp. 5-4 and 5-5 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

the conservation plan and any conservation system of the person. At the request of the person, the Secretary may provide technical assistance regarding conservation measures and management practices for other lands of the person that do not contain highly erodible cropland.

(f) ENCOURAGEMENT OF ON-FARM RESEARCH.—To encourage on-farm conservation research, the Secretary may allow a person to include in the person's conservation plan or a conservation system under the plan, on a field trial basis, practices that are not currently approved but that the Secretary considers have a reasonable likelihood of success.

SOIL SURVEYS

SEC. 1214.¹²¹⁴⁻¹ [16 U.S.C. 3813] The Secretary shall, as soon as is practicable after the date of enactment of this Act, complete soil surveys on those private lands that do not have a soil survey suitable for use in determining the land capability class for purposes of this subtitle. In carrying out this section, the Secretary shall, insofar as possible, concentrate on those localities where significant amounts of highly erodible land are being converted to the production of agricultural commodities.

SEC. 1215. [16 U.S.C. 3814] NOTICE AND INVESTIGATION OF POSSIBLE COMPLIANCE DEFICIENCIES.¹²¹⁵⁻¹

(a) IN GENERAL.—An employee of the Department of Agriculture who observes a possible compliance deficiency or other potential violation of a conservation plan or this subtitle while providing on-site technical assistance shall provide to the responsible persons, not later than 45 days after observing the possible violation, information regarding actions needed to comply with the plan and this subtitle. The employee shall provide the information in lieu of reporting the observation as a compliance violation.

(b) CORRECTIVE ACTION.—The responsible persons shall attempt to correct the deficiencies as soon as practicable after receiving the information.

(c) REVIEW.—If the corrective action is not fully implemented not later than 1 year after the responsible persons receive the information, the Secretary may conduct a review of the status of compliance of the persons with the conservation plan and this subtitle.

Subtitle C—Wetland Conservation

SEC. 1221. [16 U.S.C. 3821] PROGRAM INELIGIBILITY.¹²²¹⁻¹

(a) PRODUCTION ON CONVERTED WETLAND.—Except as provided in this subtitle and notwithstanding any other provision of law, any person who in any crop year produces an agricultural commodity on converted wetland, as determined by the Secretary, shall be—

(1) in violation of this section; and

¹²¹⁴⁻¹ Sec. 315(1) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 983, April 4, 1996, redesignated former section 1213 as section 1214.

¹²¹⁵⁻¹ Sec. 316 of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 985, April 4, 1996, added this section.

¹²²¹⁻¹ Sec. 321 of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 986, April 4, 1996, amended this section by redesignating subsection (b) as subsection (c) and by striking the section heading and all that follows through the end of subsection (a) and inserting the text printed above. For the previous version of this section, see pp. 5-8 and 5-9 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

(2) ineligible for loans or payments in an amount determined by the Secretary to be proportionate to the severity of the violation.

(b) **INELIGIBILITY FOR CERTAIN LOANS AND PAYMENTS.**—If a person is determined to have committed a violation under subsection (a) during a crop year, the Secretary shall determine which of, and the amount of, the following loans and payments for which the person shall be ineligible:

(1) Contract payments under a production flexibility contract, marketing assistance loans, and any type of price support or payment made available under the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act.

(2) A loan made or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Consolidated Farm Service Agency, if the Secretary determines that the proceeds of the loan will be used for a purpose that will contribute to conversion of a wetland (other than as provided in this subtitle) to produce an agricultural commodity.

(3) During the crop year:

(A) A payment made pursuant to a contract entered into under the environmental quality incentives program under chapter 4 of subtitle D.

(B) A payment under any other provision of subtitle D.

(C) A payment under section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 and 2202).

(D) A payment, loan, or other assistance under section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 and 1006a).

(c) ¹²²¹⁻² **WETLAND CONVERSION.**—Except ¹²²¹⁻³ as provided in section 1222 and notwithstanding any other provision of law, any person who in any crop year beginning after November 28, 1990, ¹²²¹⁻⁴ converts a wetland by draining, dredging, filling, leveling, or any other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible on such converted wetland shall be ineligible for those payments, loans, or programs specified in subsection (b) ¹²²¹⁻⁵ for that crop year and all subsequent crop years.

(d) ¹²²¹⁻⁶ **PRIOR LOANS.**—This section shall not apply to a loan described in subsection (b) made before December 23, 1985.

¹²²¹⁻² Sec. 1421(b)(6) of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3572, Nov. 28, 1990, added this subsection. For redesignation, see note 1221-1.

¹²²¹⁻³ Sec. 321(b)(1)(A) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 986, April 4, 1996, amended this subsection by striking “Except” and inserting “WETLAND CONVERSION.—Except”.

¹²²¹⁻⁴ Sec. 321(b)(1)(B) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 986, April 4, 1996, amended this subsection by striking “subsequent to the date of enactment of the Food, Agriculture, Conservation, and Trade Act of 1990” and inserting “beginning after November 28, 1990.”

¹²²¹⁻⁵ Sec. 321(b)(1)(C) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 986, April 4, 1996, amended this subsection by striking “subsections (a) (1) through (3)” and inserting “subsection (b)”.

¹²²¹⁻⁶ Sec. 321(b)(2) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 986, April 4, 1996, added subsection (d).

(e)¹²²¹⁻⁷ WETLAND.—The Secretary shall have, and shall not delegate to any private person or entity, authority to determine whether a person has complied with this subtitle.

SEC. 1222.¹²²²⁻¹ [16 U.S.C. 3822] **DELINEATION OF WETLANDS; EXEMPTIONS.**

(a)¹²²²⁻² **DELINEATION BY THE SECRETARY.**—

(1) **IN GENERAL.**—Subject to subsection (b) and paragraph (6), the Secretary shall delineate, determine, and certify all wetlands located on subject land on a farm.

(2) **WETLAND DELINEATION MAPS.**—The Secretary shall delineate wetlands on wetland delineation maps. On the request of a person, the Secretary shall make a reasonable effort to make an on-site wetland determination prior to delineation.

(3) **CERTIFICATION.**—On providing notice to affected persons, the Secretary shall—

(A) certify whether a map is sufficient for the purpose of making a determination of ineligibility for program benefits under section 1221; and

(B) provide an opportunity to appeal the certification prior to the certification becoming final.

(4) **DURATION OF CERTIFICATION.**—A final certification made under paragraph (3) shall remain valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification by the Secretary.

(5) **REVIEW OF MAPPING ON APPEAL.**—In the case of an appeal of the Secretary's certification, the Secretary shall review and certify the accuracy of the mapping of all land subject to the appeal to ensure that the subject land has been accurately delineated. Prior to rendering a decision on the appeal, the Secretary shall conduct an on-site inspection of the subject land on a farm.

(6) **RELIANCE ON PRIOR CERTIFIED DELINEATION.**—No person shall be adversely affected because of having taken an action based on a previous certified wetland delineation by the Secretary. The delineation shall not be subject to a subsequent wetland certification or delineation by the Secretary, unless requested by the person under paragraph (4).

(b)¹²²²⁻³ **EXEMPTIONS.**—No person shall become ineligible under section 1221 for program loans or payments under the following circumstances:

(1) As the result of the production of an agricultural commodity on the following lands:

(A) A converted wetland if the conversion of the wetland was commenced before December 23, 1985.

¹²²¹⁻⁷ Sec. 2002(b) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 233, May 13, 2002, added subsection (e).

¹²²²⁻¹ Sec. 1422 of the Food, Agriculture, Conservation, and Trade Act of 1990, P.L. 101-624, 104 Stat. 3573, Nov. 28, 1990, revised this section in its entirety.

¹²²²⁻² Sec. 322(a) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended subsection (a) in its entirety. For the previous version of this subsection, see pp. 5-9 and 5-10 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

¹²²²⁻³ Sec. 322(b) of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104-127, 110 Stat. 987, April 4, 1996, amended subsection (b) in its entirety. For the previous version of this subsection, see p. 5-10 of Vol. III—Conservation and Miscellaneous Programs (as of January 16, 1996).

