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Transmitted via email

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MINNESOTA BULLETIN NO. 330-4-1

SUBJECT: MGT – 2004 FOOD SECURITY ACT COMPLIANCE REVIEWS

Purpose: To provide information and instructions on the 2004 National Food Security Act Manual (NFSAM) compliance review process and reporting requirements.

Expiration Date: December 1, 2004

Audits of the compliance review process have been conducted on a national basis during the last 2 years. The following issues have been identified as problem areas that need to be corrected:

- Not checking for wetland violations during a compliance review
- Not revisiting farms granted a waiver the previous year to determine whether corrective measures were taken to achieve compliance
- Not finding a farmer in non-compliance for failure to implement an important practice

As a result of these audits the number of compliance reviews has increased significantly and the national procedure has been revised. **All staff conducting compliance reviews need to be familiar with Part 518 of the NFSAM, 4th Edition, dated March 2003 (available on the web on the NRCS On-Line Directives Management System, http://policy.nrcs.usda.gov/scripts/lpsiis.dll/M/M_180.htm) and Part 520 of the NFSAM 3rd Edition, including revisions provided through Amendment 6 dated March, 2001.**

COMPLIANCE REVIEW PROCEDURE FOR 2004

For 2004, we will be using a new web-based application to report compliance reviews. Therefore, no database will be sent to the area or field offices as we had done in the past. This web-based application is available via My.NRCS under the “accountability” tab. Click on the tab labeled “FSA Compliance Reviews” <http://ias.sc.egov.usda.gov/auth/CSR/Default.aspx>.

From this site location, <http://ias.sc.egov.usda.gov/auth/CSR/LocateTracts.aspx> select your county to view the list of tracts that have been selected for a 2004 compliance review. The user manual for this application is found under the “online Help” tab. This manual has all of the information about the screens and how to enter information in this application. It also contains a list of the HEL Compliance Review Determination codes with descriptions. Assistance State Conservationists (FO) are responsible to provide adequate training to their field staff on the use of the new compliance review reporting software.

This application also has optional sections (Parts B “Locate Customer Data” and Part C “Locate Plan Data”) that allow the user to identify producers undergoing a review in SCIMS and that allow tracts selected for review to be geo-referenced. These optional sections are not required in 2004.

Field offices will not modify compliance review lists, including changing or eliminating tracts, without approval of the Area Office Quality Control Officer.

Timing for completion of the in-field portion of compliance reviews needs to correspond to the date appropriate for evaluating the practices in the HEL plan. Data entry into the website should be done as soon as possible within workload constraints, but must be completed no later than **October 15, 2004**. Each ASTC (FO) will provide quality control to verify that all of their Area's compliance reviews and the data entry have been completed by **November 1, 2004**.

Field offices will maintain complete status review lists and all documentation used to develop the list on a calendar year basis. All information will be retained by calendar year and filed in Section 180-7.

ADD-ON TRACTS

The new system has a process for adding tracts or changing tract numbers when a tract is reconstituted. All tracts on the national list, or the land they represent, must undergo a compliance review. There are no exceptions to this requirement. The compliance data base should already include those tracts that require a mandatory review in 2004 due to a finding of less than full compliance in 2003. Each DC will verify the added on tracts with the results of their 2003 compliance reviews. All tracts found to be in non-compliance or given a variance in 2003 will be added to the 2004 list following the instructions in the "Add Tract" option of the system. Each Area office is responsible to review all county compliance review lists to insure they are accurate, complete, and properly documented. This review shall include a verification that any 2003 status review tracts granted a variance requiring a mandatory status review in 2004 are included on this year's list. Add these tracts using status code S.

The following tracts will be added to the county compliance review list:

1. All tracts owned or operated by NRCS employees (code U) are to be reviewed at least once every three years. NRCS employees are required to disclose their interest in farmland on form NRCS-CPA-1, see attachment. The State Office will maintain a complete listing of all employee owned and operated lands and will supplement the compliance review list with employee tracts subject to review.
2. Tracts owned or operated by other state, federal or local government employees and officials involved in the implementation of HEL and/or wetland compliance (code U). These tracts can be reviewed once every three years, only if requested by that agency.
3. Tracts of persons requesting reinstatement. These are tracts found to be "NA" in a prior year and must receive a compliance review during the crop year reinstatement is requested (code A).
4. Tracts on which NRCS receives whistle blower complaints, tracts which we observe as possibly in non-compliance, tracts referred by another USDA agency or other additions (code A). This includes tracts requested by FSA on Form 569 dealing with potential wetland, sodbuster and compliance plan violations.
5. FSA-Farm Credit rules require that 5% of their borrowers who farm HEL cropland receive compliance reviews. If requested, borrower tracts (code A) will be added to this year's compliance review list following the same procedure that was used last year. Each District Conservationist will meet with FSA and share a copy of the compliance review list indicating both tract numbers and operator names. It is the FSA's responsibility to select tract numbers and request compliance reviews to obtain a 5% sample of their borrowers. When it is necessary to add borrowers to the list, only one tract per borrower needs to be reviewed. It is FSA's responsibility to know which of their borrowers crop HEL and to provide any additional tracts, if needed. See NFSAM, Part 518.02C, page 518.A.02-1, 4th Edition, March 2003.

After all additions have been made, the person assigned to do the reviews will review the list and identify any tracts that may represent a personal conflict or potential conflict of interest. Personal conflict would include tracts owned or operated by family members, personal friends, SWCD supervisors, or others that might interfere with an impartial review. When tracts where personal conflicts are identified, contact the Area Office for assistance in completing these reviews.

ADJUSTMENT TO THE COMPLIANCE REVIEW LIST

If a tract on the current year's compliance review list was previously determined as "NA" or "CW" and have not been through the reinstatement process then a replacement tract will be selected.

Tracts on the list must also be replaced if any of the following criteria are met: No USDA benefits were received for the tract for the past cropping year.

- There are no HEL fields and no areas determined to be a 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

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

EXEMPTIONS FROM COMPLIANCE REVIEWS (FOR HEL COMPONENTS ONLY) (NFSAM PART 518.04)

Tracts that meet any of the following conditions are exempt from the compliance review process:

- The tract has been reviewed at least once in the past two years and found to be "AA" or "UA". If the entire tract meets these criteria the DC shall request another tract selection from the State Conservationist.
- The participant's plan documents a fully applied RMS level system.
- Where crop residue management or use is the only practice in the conservation system for a specific field within the tract **AND** the USDA participant has either self-certified or provided verification by a technical service provider that the residue levels meet the requirements of the conservation system as specified in the FOTG. Self-certification records shall become a part of the compliance review record in that person's case file.

If an entire tract meets the criteria for exemption from the HEL portion of the compliance review, then use code "EX" to show that no compliance determination was made on this tract. Code "EX" is not an option in the compliance review software, select an appropriate alternative and explain the exemption in the remarks section of the software.

In-field tract verification for wetland provisions are not exempted through this process. All compliance review tracts will be reviewed for potential wetland violations. The compliance review information for review of potential "WC" violations shall be completed and appropriately coded.

PARTIAL REVIEW OF A TRACT (NFSAM PART 518.04 D, PAGE 518.A.04-1)

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.
- A variance was granted due to a disaster; does not have to be included on the following year's compliance review list unless other conditions for a specific tract prevail.

SCHEDULING COMPLIANCE REVIEWS (NFSAM PART 518.01 C AND D; PAGE 518.A.01-1)

An appointment will be made with the person responsible for applying the plan on the tract being reviewed. NRCS will schedule reviews to encourage the producer's participation when possible. Producers are to be given at least 15 days notice but not more than 30 days notice prior to conducting the compliance review. The compliance review process is considered started once the producer notification letter is mailed.

Compliance reviews are to be conducted in a timely manner to provide the best opportunity for evaluating whether the scheduled practice(s) in the plan have been applied. Plans requiring crop residue management must be evaluated as soon as practical after planting.

CONSERVATION SYSTEM REVISION (NFSAM PART 518.01 G; PAGE 518.A.01-2)

NRCS will not provide technical assistance for conservation planning or conservation system modifications 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

CONDUCTING COMPLIANCE REVIEWS

All of the procedures in **NFSAM Part 518, Subpart B – Conducting Compliance Reviews** will be followed.

The compliance review consists of an on-site comparison of the actual application of conservation practices and treatments against those in the approved conservation plan or the appropriate plan level. The reviewer should utilize any available records, including records supplied by the producer, contractors, crop consultants, FSA, and prior NRCS technical assistance notes during the compliance review process. Where the actual conservation system being used is different than the planned system, the review should be based on the system in place. In potential HEL violation cases, the reviewer's determination will be based on whether an approved conservation system is being or has been applied on the land.

Review the entire tract for potential wetland violations. The process will include a comprehensive evaluation that a wetland violation has not occurred on the entire tract.

EVALUATION TOOLS

As was done last year, HEL compliance will be determined using RUSLE2 soil loss technology. Reviewers will need to make RUSLE2 soil loss calculations for the planned cropping systems and/or the system in use. This includes the crop rotation, tillage and planting equipment and other supporting practices. Where existing soil loss calculations have been made using models other than RUSLE2 additional calculations may be necessary. Never compare soil loss calculations from RUSLE2 to RUSLE1 or USLE.

Over the course of the last several years, many farmers have been removing or reducing the amount of forage crops in their crop rotations. Crop rotation changes are an allowable modification of HEL plans if the revised plan or system meets the ACS soil loss level and ephemeral erosion is controlled. Controlling ephemeral gully erosion is a requirement of HEL compliance. Tracts where "**first time**" identified ephemeral erosion control measures are determined to be required can be found "CA" and the HEL plan revised to add the necessary practices.

When using WEQ for evaluating conservation system planning and implementation on HEL fields due to wind erosion the Management Period Method of WEQ will be used to determine compliance.

The level of soil erosion reduction necessary to achieve compliance is explained in Part 512.10 of the NFSAM dated March 2001.

COMPLIANCE REVIEW DOCUMENTATION

Field staff will document their “tract findings” using the compliance review instructions in the software application. All reviews must also contain sufficient “individual field” documentation to fully support the determination for each field on the tract. Field staff will use conservation compliance plans, conservation assistance notes, and other inventory forms to fully document their compliance reviews findings.

- Any producer that is fully applying their conservation system, as described in their compliance plan, or has a fully applied system which meets or exceeds the conservation required in their approved plan shall be determined “UA”. For “UA” determinations, document that all planned practices are applied and being maintained for the 2004 crop year. This would include showing all scheduled practices as applied in the conservation plan and a comment in the “Comments” box stating that “all scheduled practices are fully applied and being properly maintained according to the conservation plan.” Annual practices with threshold levels, such as residue management, will require documentation to show that they are adequately applied this year. For residue management determinations, residue measurements will be documented according to policy.
- For all other determinations where the conservation plan is not fully applied (“AA”, “CA”, “AC”, “AE”, “AG”, “AH”, “AM”, “CA”) document the scheduled and applied practices as indicated for the “UA” determination (above) AND document:
 1. planned erosion rate
 2. current erosion rate
 3. ACS erosion rate
 4. Why the fields are not “UA”
- When a potential “NA” determination is suspected, make the producer aware of the situation. The producer should be given the opportunity to view the findings on-site with the reviewer. Field offices will contact the Area office for guidance on all “NA” determinations including granting variances and landowner appeal rights.
- Any field subject to sodbusting must have the “T” value documented to indicate the soil loss criteria to be achieved.
- N/HEL determinations will be field verified, including previously determined NHEL fields, where the original determination was completed in the office and the determination hinges on non-field documented PHEL soils. District Conservationists need to be aware of the latest guidance on field boundary changes, field redefinitions and revising N/HEL determinations.
- Instructions for documenting the wetlands review on the tract are in the attached user manual. Compliance with wetland provisions can be documented by using on-site, offsite or both procedures but will always include a complete aerial slide/imagery review. For all tracts with wetlands (including tracts without determinations or with non-inventoried areas) determine and document wetland compliance. The evaluation will include either a review of the current year imagery/photography or an in-field visit. On tracts without wetlands (entire tract labeled “NW” or “PC” or “NW/PC”) and without non-inventoried areas, this slide or in-field review is not required. Use the comments box in the software to make any necessary explanations.

The compliance review process is about making and documenting decisions. An integral element of the process is to insure that correct determinations are being consistently made. Adequate supporting documentation of compliance reviews must be done to achieve this goal. Enough documentation should be present to prove what led the reviewer to make the determination. Documentation is most critical on those determinations found to be “NA” or where a variance is being granted. All producers will be notified in writing of the compliance review results.

Direct questions on the information contained in this bulletin through your Area office to Paul Flynn, State Resource Conservationist at 651-602-7870.

WILLIAM HUNT
State Conservationist

Attach: NRCS-CPA-1

DIST: AC
FO
ARC