



Natural Resources Conservation Service
375 Jackson Street, Suite 600 Phone: (651)
St. Paul, MN 55101-1854

602-7900
Fax: (651) 602-7914

April 15, 2008

Transmitted via Email

MINNESOTA BULLETIN NO. 330-8-2

SUBJECT: MGT – 2008 FOOD SECURITY ACT COMPLIANCE REVIEWS

STATUS REVIEWS ARE TO BE COMPLETED BY NOVEMBER 3, 2008

Purpose. To provide information and instructions on the 2008 Food Security Act compliance review process and reporting requirements.

Expiration Date. December 30, 2008

The tracts selected for the 2008 FSA Compliance Reviews are now available in the Compliance Review web application which is accessed through the my.NRCS - Field Tools tab. The current total number of reviews selected for MN for FY2008 is 923.

Procedures to use this site remain the same as last year. There is an upgrade to the reports section which now has data from 2004 - 2007 prior year reviews.

The user manual dated April 2007 is available on the Help tab of the application. This manual has all the information concerning data entry for this application. Assistant State Conservationists (FO) are responsible to insure that their field staffs have been adequately trained compliance review procedures including use of the reporting software. **All staff conducting compliance reviews need to be familiar with Part 518 of the NFSAM, Fourth Edition.**

Reminders for constructing the compliance review list:

- Tracts added by State or field office can be deleted by Mike Pageler, state status review database coordinator, if it is not a correct tract. There should be no “invalid” or “tract not found” codes on tracts added by the State or field.
- Tracts that received a variance determination last year have been added to the tract list to be reviewed again this year. District Conservationists need to verify that all tracts given a Compliance Review variance in 2007 are added to this year’s review list.
- District Conservationist are not authorized to modify compliance review lists, including changing or eliminating tracts, without approval of the Area Office Quality Control Officer.
- Tracts found to be invalid should only be replaced by a valid tract which has reviewable data.

Compliance Review Procedure for 2008

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 **November 3, 2008**. 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 14, 2008**.

Helping People Help the Land

An Equal Opportunity Provider and Employer



Add-On Tracts

The compliance review data base has a process for creating new tracts or changing tract numbers when a selected 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. Unless already done by the national office, all tracts found to be in non-compliance or given a variance in 2007 will be added to the 2008 list. The following tracts will also be added to the county compliance review list (See NFSAM, Part 518.02(c), Fourth Ed., Amend. 2, August 2006):

1. 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 shall be reviewed once every three years, only if requested by that agency. In FY2007 the CPA-001 form was found to be in conflict with the Privacy Act and data on NRCS employee owned tracts was not collected. For FY2008 NHQ will initiate a new procedure to capture these tracts. Until that procedure is distributed do not add NRCS employee owned tracts to the compliance review list.
2. 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) (**see the procedure below**).
3. Tracts where a variance or exemption was granted the previous year. 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. Contact your ARC if a FY2007 variance was granted due to drought or flooding.
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 five percent 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 five percent 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 have HEL cropland and to provide any additional tracts, if needed.
6. CRP contracts - Early Contract Termination (Cancellation): CRP contracts with early termination will be added to the current year county compliance status review list. Early termination is defined as the removal (cancellation) of all enrolled CRP land on the contract prior to it's expiration date. It is **not** the removal of a portion of the acreage in a CRP contracts **or** the transfer of ownership following the successor-in interest policy. Each District Conservationist will need to explain this provision to their FSA staff, do not simply ask for FY2008 early terminated CRP contracts as this wording has a different meaning in the CRP Manual. This will be done when the land or owner / operator will be a 2008 USDA participant AND
 - The tract contains a reviewable determination (HEL or wetland)

- The tract only contains HEL fields AND at least one HEL field will be converted (restored) to cropland. No review is needed if **all** of the HEL fields will remain in perennial cover (including trees and pasture) and will not be cropped.

For prior year NA tracts (#2, above), the following procedure will be followed:

1. Ask FSA for most current AD1026 and FSA-569
2. Determine if the tract is owned and/or operated by a current year program participant (ask FSA for a determination of the status of the tract and participant). Where we have researched and determined that the tract is for a non-participant, code the tract as NN. USDA employees are not authorized to have access to non-participant lands which means that no compliance review will be conducted.
3. If the participant is applying a conservation system that will meet the soil protection requirements (substantial reduction or no substantial increase) certify that person is in compliance with the HELC provisions using the appropriate compliance code.
4. If the participant is not applying a conservation system that will meet the soil protection requirements, take the following actions:
 - Inform FSA of the NA status via the existing or new FSA-569
 - Notify your Area Compliance coordinator
 - Prepare and issue a Preliminary Technical Determination for the 2008 crop year following the normal procedure for adverse determinations in accordance with 7 CFR 614 (5/16/06 version).
 - Enter the NA determination into the compliance review database.
5. For those tracts where the participant has not certified compliance with the provisions by executing a new AD1026 following the previous year violation, NRCS will review the tract for compliance with the HELC provisions. If a conservation system is not being applied AND an annually tilled commodity crop is being produced, code the tract NA and request an FSA-569. Follow the procedures in Step 4 above. If there is no annually tilled commodity crop being produced, code the tract NN and provide the following note in the remarks section of the compliance review database: Not participating in 2008 USDA. The FSA 569 should be returned to FSA showing that there is no violation because there are currently no annually tilled commodity crops being produced on that tract.

Review of and Adjustment to the Compliance Review List (NFSAM Part 518.03)

Upon receipt of the compliance review tract list, 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 in the compliance review database, including the current USDA participant names(s), address(es) and other information.

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.

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”
- 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 by a technical service provider certification 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. If only a field is exempted, then fully document the field exemption in the remarks section of the software, and code the tract with the appropriate compliance review code based on the remainder of the field review.

In-field tract verification for wetland provisions are not exempted through this process. All compliance review tracts will be reviewed in-the-field 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))

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 NFSAM Part 518.04 a through c. The review for these tracts will be conducted for any potential wetland violations only.
- A variance was granted due to a disaster, these tracts do 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)

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)

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 518.10, 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 HEL plan level requirements. 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 conservation 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.

For cases with a potential violation the in-field evaluation of applied conservation will be conducted on those soil units determined to be HEL.

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

HEL compliance (not determinations) will utilize RUSLE-2 soil loss technology. Where existing soil loss calculations have been made using models other than RUSLE-2 additional calculations will be necessary.

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 needed 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 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 implementation shall be evaluated using the Management Period Method. **Do not mix the use of the two WEQ calculation methods.**

Compliance Review Documentation

All of the information about the tract and the compliance review will be entered in the appropriate data entry locations included in the Compliance Review Database. All reviews must contain sufficient documentation to fully support the determination for each field on the tract. Field staff will also use conservation compliance plans, conservation assistance notes, and other inventory forms as noted below to fully document their compliance review 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 2008 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, 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. Field staff may not change existing N/HEL determinations without first contacting the ARC.
- **Compliance with wetland provisions must be documented using on-site procedures.** For all tracts with wetlands (including tracts without determinations or with non-inventoried areas) determine and document wetland compliance. The evaluation should include, if available, a complete aerial slide/imagery review and a review of the current year imagery/photography. 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 ensure 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.

/s/

WILLIAM HUNT
State Conservationist

DIST: ASTC (FO)
FO
ARC
Ann English, ASTC (OP), St. Paul, MN