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KANSAS BULLETIN NO. KS180-13-1

SUBJECT: CPA—Wetland Conservation Compliance Provision Improvement Action Plan

Purpose. To provide guidance regarding the Wetland Conservation Compliance (WCC) Provision Improvement Action Plan (Wetland Action Plan)

Expiration Date. September 30, 2014

The Wetland Action Plan addresses activities only related to the administration of the Wetland Conservation (WC) provisions of the 1985 Food Security Act. These duties are provided specifically in Title 7 Code of Federal Regulations (CFR) Part 12, Sections 12.6 and 12.31 of the Highly Erodible Land Conservation (HELCS) and WC rule. This plan does not address wetland assistance related to the Natural Resources Conservation Service (NRCS) Wetland Protection Policy in the General Manual (GM) or other wetland responsibilities and programs.

This plan was developed to achieve the following four overarching objectives:

- Ensure separation between service center staff and U.S. Department of Agriculture (USDA) program participants within their location county in conducting wetland determinations (WDs), reviews, and addressing appeals
- Maintain a high-valued relationship between NRCS staff and customers
- Improve efficiencies in WDs and reviews
- Effect positive changes in NRCS WC processes and procedures

All NRCS service center staff must have an understanding of the WC provisions as well as other program eligibility, permit, and regulatory issues that impact agricultural producers. Related general information and guidance associated with wetlands is an integral part of the conservation planning process. This policy does not change the role and responsibilities of service center staff to provide quality conservation planning. Rather it is limited to the official NRCS response to the receipt of Forms AD-1026, Highly Erodible Land Conservation (HELCS) and Wetland Conservation (WC) Certification; NRCS-CPA-38, Request for Certified Wetland Determination or Delineation; and FSA-569, NRCS Report of HELCS and WC Compliance.

The Wetland Action Plan encompasses four distinct functions:

- Conducting certified WDs related to the WC provisions
- Responding to appeals of adverse WDs
- Conducting WC status reviews
- Assisting USDA participants in regaining eligibility for program benefits following a WD of non-compliance

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1) Conducting certified WDs, and (2) responding to appeals of adverse WDs

All WDs will be completed by staff listed on the State Conservationist's Roster of Wetland Experts (Roster) filed in Section III of the Field Office Technical Guide, under "Legislated Programs, Job Approval Authority." The Roster includes the technical tasks of conducting WDs/delineations, scope and effect evaluations, functional assessments, minimal effects evaluations, and mitigation activities.

In order to ensure separation of duties, maintain high-valued relationships between NRCS staff and customers, and meet NRCS responsibilities provided for by the Secretary in Title 7 CFR Part 12 as efficient as possible, the following process will be used:

Step 1: Receipt of Request

When a request for a WD is received by the NRCS, service center staff will (A) log the request in the HELC/WC Tracking Tool, then (B) forward, along with a Form KS-MGT-2, Request for Assistance, and any required ancillary information (Forms AD-1026, FSA-569, CPA-038; a map indicating area of activity; participant contact information; historical WDs, etc.) to the appropriate assistant state conservationist for field operations (ASTC-FO). The NRCS service center staff will complete these tasks within ten working days of receipt of request for a WD.

Note: The ASTC-FO will assign the task to the Resource Soil Scientist (RSS). The RSS ensures the WD is completed, manages the project, and updates the HELC/WC Tracking Tool. This tool is currently under development. Continue to use current tracking methods until release of the HELC/WC Tracking Tool.

Step 2: Assignment of Wetland Expert

The RSS will complete most of the WDs as the wetland expert. If the RSS needs assistance, the RSS shall assign staff with the appropriate job approval authority as provided in the Roster. When assigning staff, it is the responsibility of the RSS to ensure separation of duties.

Step 3: Preliminary WD

Service center staff will not be involved in making WDs within their location county.

The RSS or assigned wetland expert will sign the preliminary WD letter, Form NRCS-CPA-026e, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Determination, and send with a wetland map via certified mail directly to the participant. Appeal rights will be provided within the preliminary WD letter. A copy of the preliminary WD letter, Form NRCS-CPA-026e, and wetland map will be provided to the ASTC-FO; Supervisory District Conservationist (SDC); District Conservationist (DC); and Conservation District Chairperson.

If reconsideration is requested, a required field visit shall be scheduled. The RSS or assigned wetland expert that performed the WD will represent NRCS during the review of the preliminary WD.

- Modification, if needed, of the WD will be made based on the reconsideration.
- If the WD remains adverse, then the RSS or assigned wetland expert transmits the preliminary WD and administrative record to the state conservationist (STC). A copy of the letter of transmittal will be provided to the program participant so they are aware that the WD remained adverse and that the preliminary WD has been elevated for review and independent consideration by the STC.

If the client chooses to elevate concerns directly to NAD, the RSS or assigned wetland expert will work with the state biologist to prepare for the appeal.

Step 4: Rendering of Final Agency Decision

The final agency decision is provided to the client from NAD, or from the STC.

The administrative record is provided to the SDC/DC for proper filing.

3) Conducting Conservation Compliance Status Reviews

In order to ensure separation of duties, improve efficiency, and maintain high-valued relationships between NRCS field staff and customers, the following process will be used:

- Wetland compliance reviews will be completed by management unit staff as directed by the SDC. Service center staff will not be involved in conducting compliance reviews in their location county.

4) Assisting USDA participants in regaining eligibility for program benefits following a determination of non-compliance

- Program participants can regain their eligibility for USDA benefits by mitigating for lost wetland functions, values, and acres.
- When a request to regain eligibility is received by the service center, it will be forwarded to the ASTC-FO along with a Form KS-MGT-2. The RSS will assign tasks to staff listed on the Roster. These tasks include developing/approving mitigation plans, determining success criteria, addressing appeals of the mitigation plan, and ensuring requirements of the mitigation plan or agreement are met. FO staff will not provide assistance to complete these tasks within their location county.
- The final decision that restoration of eligibility requirements has been met will be made by the RSS.
- The administrative record will be provided to the service center for proper filing.

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State Conservationist