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July 17, 2003

**NATIONAL FOOD SECURITY ACT MANUAL, Fourth Addition, 1996**  
**180-V NFSAM**  
**Idaho Notice No. 8**

**Subject:** Part 518, Compliance Reviews

**Purpose:** To provide revised Section 518 of the NFSAM.

**Effective Date:** Date of this notice.

The National Office is in the process of completely revising the NFSAM, but one Part at a time. Attached is a complete revision of Part 518 (Fourth Edition) of the NFSAM. The revised section has been completely rewritten however the basic content appears to be the same. Changes or clarifications in this section addresses how tracts are selected and added to the county review list, and documentation of review findings in the Access Database currently used. This revision comes in the middle of the current calendar year; therefore implement the changes included in this revision beginning in the next calendar year.

Noted changes are:

1. Guidance has been consolidated into three (3) subsections which includes an exhibit section. Do not confuse Subsection C, Exhibits with Part 526 Exhibits.
2. Page 518.A.03-1 – Section 518.03 c – Replacing Selected Tracts. In the past if a tract that was on the list did not exist or did not require a status review, it was so noted in the data base and no action was taken. Now the tract must be replaced with another tract. No direction is provided from National Office for replacing the tract. State direction will be to randomly select another tract(s) from the same owner/operator, if possible. If the owner/operator does not have additional tracts that are being farmed, randomly select another tract from the county list.
3. Page 518B.12-1 – Section 518.12 c. This section states that only NRCS staff can notify Farm Service Agency of a violation. This addition would apply to situations where status reviews have been outsourced to a private contractor. The person contracted to conduct the reviews can not notify FSA of a potential violation, final determination or process the FSA-569.
4. Page 518B.10-1 – Section 518.10 c. This section clarifies issues related to reconstitutions. If a tract is split as a result of a reconstitution, then all tracts created as a result of the split are added to the review list.

**Filing Instructions:**

Remove Part 518 – Status Reviews dated November 1996 in its entirety and insert Part 518 – Status Reviews dated March 2003.

A handwritten signature in black ink that reads "Richard Sims".

RICHARD SIMS  
State Conservationist

Attachment

## **National Food Security Act Manual, Fourth Edition**

### **Part 518 – Compliance Reviews**

#### **Subpart A – Preparation for Conducting Compliance Reviews**

**518.01      General Information**

**518.02      Tract Selections**

**518.03      Review and Adjustment of the Compliance Review List**

**518.04      Exemptions from Compliance Reviews (for HEL Components Only)**



## National Food Security Act Manual, Fourth Edition

### Part 518 – Compliance Reviews

#### Subpart A – Preparation for Conducting Compliance Reviews

##### 518.01 General Information

###### a Compliance Review General Policy

General policy for Compliance Reviews is set forth in GM 340, Part 413, Subpart C. Technical procedural policy for HELC/WC compliance reviews is set forth in this part of the NFSAM.

###### b Compliance Review Assignments

The State Conservationist shall determine who will conduct compliance reviews within each State, as set forth in GM 340, Part 413, Subpart C.

###### 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 period 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 15<sup>th</sup> of each year.
- Whistleblower complaints must be investigated within 45 days of receipt of the complaint (See NFSAM, Part 520, Subpart C, Paragraph 520.31).

###### 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 planing 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 520.31).
- 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 520.21) was applied)).
  - Tracts reported through a whistleblower complaint (See also NFSAM Part 520, Subpart C, Section 520.31).

## **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 15<sup>th</sup>

- 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 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.

## **National Food Security Act Manual, Fourth Edition**

### **Part 518 – Compliance Status Reviews**

#### **Subpart B – Conducting Status Reviews**

**518.10      Conducting Compliance Reviews**

**518.11      Determining Compliance with the HELC/WC Provisions**

**518.12      HEL and Wetland Conservation Compliance Violation Determinations**



## Part 518 – Compliance Reviews

### Subpart B – Conducting Compliance Reviews

#### 518.10 Conducting Compliance Reviews

##### a Compliance Review Database

A Microsoft Access Database application has been developed to record, transmit, and store compliance review information. The database, as well as the instructions for use is described in the “Food Security Act Compliance Review System User Documentation” provided with the database. It is available electronically from the Operations Management and Oversight Division in NHQ and is a module of the National Quality Assurance/Compliance Database referenced in the Quality Control Manual. (See NFSAM, Part 518.20).

##### b Office Reviews

Compliance reviews may be conducted as stand-alone reviews or in conjunction with State Quality Reviews (GM 340, Part 413).

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.

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

**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.

<b>Code</b>	<b>Review Determination</b>	<b>Applicability and Use</b>
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: <ul style="list-style-type: none"> <li>• Severe weather</li> <li>• Pests</li> <li>• Disease</li> </ul>
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,

		<p>including:</p> <ul style="list-style-type: none"> <li>• A severe physical condition or death of the farm operator or a family member that prevented the application of the full conservation system.</li> <li>• Destruction of equipment or farm holdings by fire, natural disaster, or other similar occurrences.</li> <li>• Special problems or situations, including NRCS error that prevented the USDA participant from applying the practice.</li> </ul> <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> <p>Note: If considering this label for NRCS technical error, see either NA/ER or PV/ER definitions.</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> <ul style="list-style-type: none"> <li>• Major maintenance of structure measure(s) are required.</li> <li>• Planned structural conservation practices are scheduled to be installed.</li> </ul> <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 <u>518.01(f)</u> .
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 <u>518.03(c)</u> .
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> <ul style="list-style-type: none"> <li>• The field or tract is not being used to produce annually tilled agricultural commodities in the current and/or previous years.</li> <li>• The field or tract does not have any land determined as being HEL or Wetland.</li> <li>• The owner and/or operator do not participate in any USDA programs subject to the HELC/WC provisions.</li> </ul>
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> <ul style="list-style-type: none"> <li>• The violation is only on HEL cropland.</li> <li>• The violation was <u>not</u> found during an official compliance review or during a whistleblower review.</li> <li>• The USDA participant has agreed, within 45 days of the violation to apply an approved conservation plan within one year.</li> </ul>
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 shall 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, 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.

## **National Food Security Act Manual, Fourth Edition**

### **Part 518 – Compliance Reviews**

#### **Subpart C – Exhibits**

**518.20 Compliance Review Database User's Guide**

**518.21 HELC Program Ineligibility Determination Authority, 16 U.S.C. 3811(b)**

**518.22 WC Program Ineligibility Determination Authority, 16 U.S.C. 3821(e)**

**518.23 NRCS-CPA-1, Employee Report of Farming Interests**



# FSA Compliance Review System User Documentation

## Purpose

The purpose of the Food Security Act (FSA) Compliance Reviews Database System is to:

- 1) provide a nationally uniform means of collecting and maintaining FSA Compliance Review data at the field, State, and national levels,
- 2) apply established business rules and data validation to improve basic data quality, quantity, and integrity, and
- 3) provide a user-friendly and efficient mechanism to analyze and report Compliance Review information at the end of the year.

## Background

In 2000, the FSA Compliance Review data collection process was revamped. A Microsoft Access97 database application was developed to provide a uniform means of collecting, maintaining, analyzing, and reporting Compliance Review data. The application has built-in data quality checks, including data type and length, and forces the user to select from standardized lists, where possible. These steps were taken to improve the overall data quality and integrity of the data and analyses.

A screen print of the database menus is included on Pages 8 – 13 of this documentation. You may want to print only pages 1–7 of this documentation for a user guide.

Database application questions are handled by LeRoy Hall, Operations Management and Oversight Division, at (202) 720-0040. Technical compliance review questions are handled by Beth Schuler, Conservation Operations Division, at (615) 646-9741.

## Basic Instructions – Before You Start

The application has been sent to you as a zipped file (FSAReview2003XX.zip). Save the zipped file to your hard drive, and then double-click on the file. A pop-up window will be displayed and will ask where to unzip the file. Select the directory location where the database will reside, click on the extract button to unzip the files and be ready to go. The zipped file is NOT password-protected. If you experience problems unzipping the file, contact LeRoy Hall ([LeRoy.Hall@usda.gov](mailto:LeRoy.Hall@usda.gov)) at NHQ who will transmit the unzipped version to you. Two copies are being furnished to the State Office; one is the Design Master and the other is the Database Replicate. State offices should retain the Design Master and distribute copies of the Database Replicate to each county that has compliance review tracts pre-selected or has the potential of state- or locally-selected tracts.

## What are Replicated Databases?

Replicated databases are every bit a real database as standard databases. They have tables, queries, and reports that **cannot** be modified in design, but tables can be queried, data can be displayed in forms and modified, data can be saved to tables, and reports can be generated, just like regular databases. The replicated database being sent to the field offices is identical to the Design Master database maintained at the State.

## What is Design Master Database?

Design Master Database is the primary database of a series of replicated databases. Only the Design Master database allows for the modification of database design. They are basically like a regular database, but are slightly bigger than their standard database equivalent. They do have replicated tables, queries, forms, and reports, but are capable of aggregating data from each of the replicated databases. When databases are transmitted from county (or field) offices, the State office will synchronize the replicated database with the Design Master. If any changes have

been made to the data in either the Design Master or the Replicated Database, the two databases will be brought into agreement. This allows any number of replicated databases to provide updated records to the Design Master.

## Basic Instructions – Getting Started – State Office

Only basic knowledge of Microsoft Access97 is required to run this application. Two databases were sent to you. The database to be used at the State office is the Design Master file (FSAReview2003XX.mdb where XX is your state 2-character abbreviation). The database to be used by the field offices is the Replicated Database file (FSAReview2003XXrep.mdb where XX is your state 2-character abbreviation and rep stands for replicated database).

Upon receiving your Design Master Database and your Replicated Database, save them to your local computer system. Then transmit a copy of the Replicated Database to field offices or locations where FSA Compliance Reviews are going to be conducted and information collected.

The application is started by opening the database file (FSAReview2003XX.mdb where XX is your state 2-character abbreviation), the Main Menu screen will automatically appear. The application is built around a series of screens, data entry forms, data quality check reports, and general reports. Basic screen navigation is through buttons and tabs. Data entry is through direct text entry in text boxes, radio button clicks, or pull-down selection lists. **Data entry at the State office will only be necessary if a field office cannot run this database application.**

The State office should print a list of tracts by County to preview the number of tracts being sent to each field office. To get this printout, select the 'Getting Started' button on the opening screen, and then select 'Pre-Selected Tracts by County Report'. The State office should also complete the form on the Getting Started Menu by clicking on the button, 'Enter State Contact Information'.

## Basic Instructions – Getting Started – Field Office

Only basic knowledge of Microsoft Access97 is required to run this application. One replicated database was sent to you. The Replicated Database file (FSAReview2003XXrep.mdb where XX is your state 2-character abbreviation and rep stands for replicated database) contains all tables, queries, forms, reports, macros, and reports that the Design Master Database contains. It also contains **all** pre-selected tracts within your state.

Save the database to your local computer system.

The application is started by opening the database file (FSAReview2003XX.mdb where XX is your state 2-character abbreviation), the Main Menu screen will automatically appear. The application is built around a series of screens, data entry forms, data quality check reports, and general reports. Basic screen navigation is through buttons and tabs. Data entry is through direct text entry in text boxes, radio button clicks, or pull-down selection lists.

The rest of these instructions provide a description of the menu screens that drive the application. Each of the screen options will be defined briefly to provide the user the expected result of pressing each of the menu options.

## Main Menu Choice Options

- Getting Started
- Data Entry/Edit Menu
- Review Compliance Review Results
- State Office Use Reports
- Exit

When starting the application, the first screen is the Main Menu. The options on this menu are: 1) **Getting Started** – prints sample tracts and records FSA Contact person information, 2) **Data Entry/Edit** - FSA Compliance Review tract data, 3) **Review Compliance Review** - run a series of quality assurance and checking reports, and other assorted reports, 4) **State Office Use** - provides some additional reports for States to examine the completeness of the compliance review data, and 5) **Exit** - exit the application.

## Basic Instructions – Tract Lists to Counties

- Step 1: Select Getting Started.
- Step 2: Select menu item 'Pre-Selected Tracts by User-selected County Report
- Step 3: Print a list of county tracts that are subject to compliance review.
- Step 4: Enter county name at pop-up screen.
- Step 5: Examine list to ensure that all tracts for review are listed.
- Step 6: Missing tracts may be added through the Data Entry/Edit Menu, at the Main Menu option.

The tract list is available in two reports, "**Pre-selected Tracts by County Report**" and "**Pre-selected Tracts by User-selected County Report**". These reports display all pre-selected compliance review tracts by county. The "**Pre-selected Tracts by County Report**" displays all tracts for a state, with each county's tracts on a separate page(s). "**Pre-selected Tracts by User-selected County Report**" displays the pre-selected tracts for only the county indicated by the user. The user will be prompted for the county name prior to generating this report. These reports are intended to serve as a means of providing a quick list of tracts within a county.

## Getting Started Menu Options

- Pre-selected Tracts by County Report
- Pre-selected Tracts by User-selected County Report
- Enter State Contact Information
- Return to Main Menu

"Pre-selected Tracts by County Report" option generates a report of all tracts within a state, on a county basis. **Each county's tracts are displayed on separate pages.**

"Pre-selected Tracts by User-selected County Report" option generates a report of all tracts within a county within a state, for whatever county is entered by the user at the prompt.

"State Contact Information" option records basic information about the State office and the field offices primary FSA Compliance Review Contacts. Data requested include first and last name, title, office type, telephone and fax numbers, and e-mail address. This is important information to require in the event of data questions. Completion of this information is **NOT** optional.

"Return to Main Menu" option closes the current menu and returns the user to the Main Menu.

## Data Entry/Edit Menu

- Enter/Edit Pre-selected FSA Compliance Review Tracts
- Enter/Edit State-selected FSA Compliance Review Tracts
- Return to Main Menu

Once determinations have been completed, the information should be entered through the data entry forms, available under the "Data Entry/Edit Menu" option on the Main Menu. On the "Data Entry/Edit Menu" screen, select "**Enter/Edit Pre-Selected Compliance Review Tracts**" to enter and edit information about the state's **pre-selected** FSA Compliance Review tracts sent from NHQ and "**Enter/Edit State-Selected Compliance Review Tracts**" to enter and edit information about **additional** tracts added at the state or local level (referrals, variances, multiple tract splits).

The "Return to Main Menu" option closes the current menu and returns the user to the Main Menu.

Remember, **Pre-selected** refers to tracts that have been sent to the States from NHQ as part of the yearly sample of tracts being reviewed in the current year. Compliance Review data for these tracts must be entered through the "Pre-selected Tracts" menu.

**State-Selected** tracts are additional reviews on tracts identified by the State or field offices. This review information must be entered through the "State-Selected Tracts" menu.

**→ IMPORTANT NOTE:****NEW TRACT NUMBERS**

For tracts in the pre-selected list that are now multiple tracts, use the following procedure for recording information:

1. For pre-selected tracts that have been subdivided into multiple tracts, record one "New Tract No." information within the appropriate record on the "Enter/Edit Pre-selected Compliance Review Tracts" form.
2. Enter complete review information on the other new tract(s) on the "Enter/Edit State-selected Compliance Review Tracts" form. Enter the existing tract number in the "Tract No." box of each record, but record the new tract number in the "New Tract No." box. Each subdivided tract will have an individual record in the "Enter/Edit State-selected Compliance Review Tracts" form, but will have the same original "Tract No."

**Points of emphasis on entering compliance review data**

- **Tract is invalid or Not Found** --- Mark the invalid or not found data box and complete the pop-up form.
- Comments should be added to any record to clarify determination.
- Make sure all fields are completed when using the State-selected data input screen.
- Do not use the State-selected data entry screen to enter data on tracts sent to States from NHQ (pre-selected). This action creates duplicate records.
- Mark the Wetlands present on tract field as 'Yes' if a wetlands conditions are observed as part of the review. A 'Yes' will bring up a pop-up form for recording further wetlands information.
- All tracts must have the field's "time", "acres", and "determination" completed unless it is marked **Invalid or Not Found**.
- Addition information will be collected for any 'NN' or 'NC' determinations on a pop-up form.
- State Office coordinators should run all the reports after consolidating the review data. Duplicate records should be removed before sending data to NHQ.

**Review Compliance Review Results Menu**

Use all the menu items on this screen before you transmit this database to the State Office. The reports generated on these reports should be blank if all the fields on the compliance reviews have been completed. County FIPS codes should not show up in the reports.

- **All Valid Tracts without Acreages**  
Identifies all tracts that did not have the acreage field completed.
- **All Valid Tracts without a Compliance Determination**  
Identifies all tracts with a blank compliance determination field.
- **All Valid Tracts without Wetlands Violation Designation**  
Identifies all tracts with a blank wetlands violation designation field.
- **Duplicate Tracts Report**  
Identifies tract numbers that are duplicated which may indicate that the sample tract was entered into the State selected form. Tracts with multiple new tract numbers should be listed in this report.
- **Print Findings for Compliance Tracts in County**  
User enters the county fips code and gets a printout of all determinations on tracts in that county.  
Replaces the CPA-18 form for the field office records.
- **Return to Main Menu**

## Reports Menu List

**Note:** Any report that contains an error message “#error” means this calculation or count is based on a query that resulted in no answers. This message should be equated to the number zero.

- General Tract Information Reports (menu)
- Compliance Violations Reports (menu)
- Wetlands Violations Reports (menu)
- State Summary of Compliance Reviews
- Determination Summary
- Return to Main Menu

### General Tract Information Reports Menu

- All FSA Compliance Review Tracts by State
- All FSA Compliance Review Tracts by County  
The above two reports show findings of reviews for all counties or one county.
- Pre-selected FSA Compliance Review Tracts  
Provides report of findings on tracts in State that were in the sample tracts.
- State-selected FSA Compliance Review Tracts  
Provides report of findings on tracts added to the compliance review by State.
- Return to Reports Menu
- Return to Main Menu

### Compliance Violations Reports Menu

- All Tracts – Compliance Violations Report
- All Tracts by County – Compliance Violations Report.  
Provides report by State or one County with review determinations of NA or PV.
- Pre-selected Tracts with Compliance Violations Report  
Provides report of determinations of NA or PV on sample tracts.
- State-selected Tracts with Compliance Violations Report  
Provides report of determinations of NA or PV on tracts added by State.
- Return to Reports Menu
- Return to Main Menu

### Wetlands Violations Reports Menu

- All Tracts – Wetlands Violations Report
- All Tracts by County - Wetlands Violations Report  
Provides report on all tracts by State or one county that have wetlands present on tract.
- Pre-selected Tracts with Wetlands Violations Report  
Provides report of sample tracts that were found to have wetlands present.
- State-selected Tracts with Wetlands Violations Report  
Provides report of tracts added by State that were found to have wetlands present.
- Return to Reports Menu

The following reports should be run by the State after synchronizing the databases from all the field offices. They will provide the data in a format that permits States to analyze their own data.

- State Summary of Compliance Reviews
- Determinations Summary  
These two reports summarize the time spent and the number of acres on the tracts that were reviewed this year.

## Final Step for State Office Menu

This menu is new for 2002. It will generate additional reports for State office use for conducting its own analysis of the Compliance Review data in the State. This should be run after the synchronization process.

- All Invalid Tracts  
Identifies all tracts that are no longer subject to a compliance review.
- Missing Data Reports  
Sends user to the Quality Assurance Check menu
- All Tracts Designated - Plan Not Needed  
Summary report on all tracts with this determination.
- Summary of Determinations  
Summary report on reviews sorted by the compliance determination.
- Non-Compliance Report  
Summary report on all tracts with a determination of NA or PV.

Additional Reports will be added to this menu as the needs are identified.

## Basic Instructions Returning Replicated Databases

Once replicated databases have been populated completely, transmit this database back to State office. The FSA Compliance Review contact in the State office will update or "synchronize" the replicated databases with the State office Design Master. At the time that the databases are synchronized, all changes made to either the Design Master or the Replicated Database will incorporate the changes.

### How do I Synchronize my Databases?

Once a field office has completed recording compliance review information about its tracts in the database, the database should be transmitted from the field office to the State office. At the State office, the database will be synchronized with the Design Master in the following way. **Only the State Office synchronizes the databases.**

Save the replicated database to a directory on your local State office system.

- open up your State's Design Master Database (FSAReview2003XX.mdb),
- click on the "Tools" menu option on the main Access97 toolbar,
- on the dropdown menu, click on the "Replication" option and "Synchronize Now" option.

The process will then begin and should be completed in just a few minutes. Once completed, both the Design Master and the Replicated Database will contain identical data.

## Transmission of Database to National Headquarters

Once the database has been populated with complete information about all individual Compliance Review Tracts, **zip the database**, using WinZip, and transmit the zipped file to LeRoy Hall at LeRoy.Hall@usda.gov with a note indicating its completion. If you experience any problems during the transmission, send LeRoy an e-mail to that effect and alternative means to transmitting the database will be made available on an individual basis.

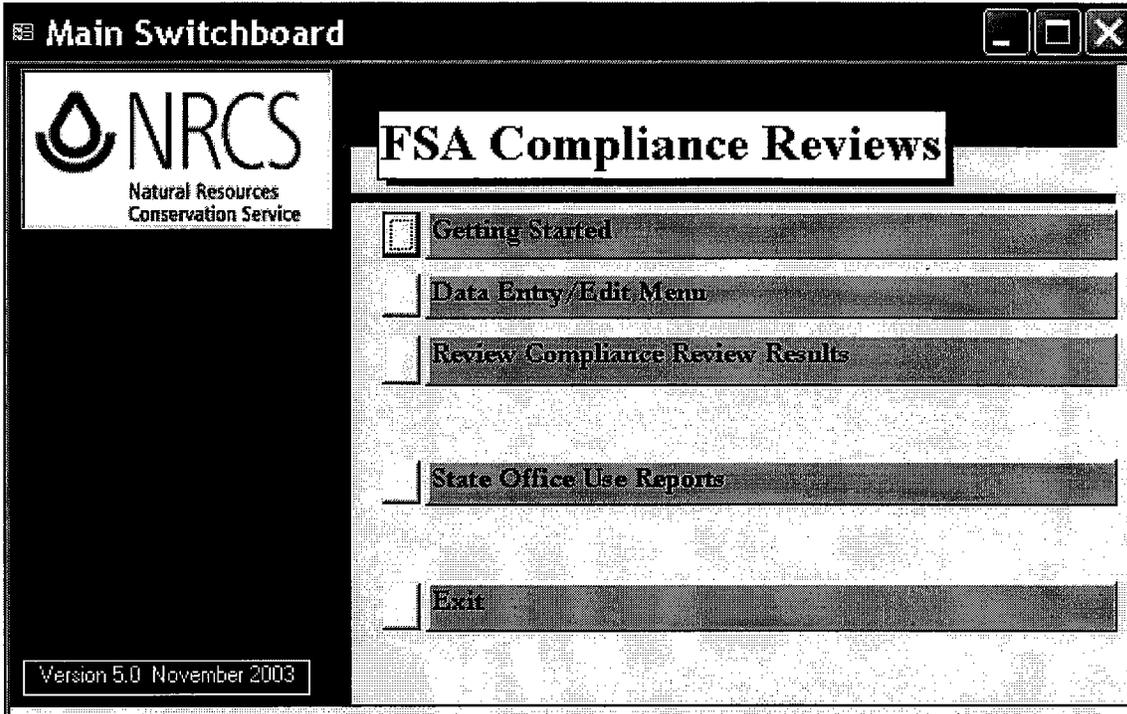
**COMPLIANCE REVIEW DETERMINATION CODES AND DEFINITIONS**

- AA – Actively applying an approved conservation plan – An approved conservation plan is being applied on all HEL fields on the tract, or an approved conservation plan is being applied on some HEL fields on the tract, and the previously treated HEL field(s) is/are using an approved conservation system, or systems.
- AC – Variance because of severe and unusual conditions - Applying an approved conservation plan, or using an approved conservation system with a temporary variance. The temporary variance should be due to special conditions, including severe weather, pests, or disease which prohibited or changed the application of the required scheduled conservation practices.
- AE – Variance because of economic hardship – Applying an approved conservation plan or using an approved conservation system with an exemption based on economic hardship as determined by the FSA County Committee and approved by the State Committee.
- AG – Exemption based on a Good Faith Determination – Applying an approved conservation system with an exemption based on a good faith determination by the FSA County Committee.
- AH – Variance because of extreme personal hardship – Applying an approved conservation plan or using an approved conservation system with a variance because of a special problem, technical error, incorrect plan, or unusual occurrence prohibited the application of the required scheduled practices(s).
- AM – Variance with a minimal or technical effect – Applying an approved or an approved conservation system with a variance based on failure which is technical and minor in nature.
- CA – Conditionally applying an approved conservation plan or system.
- EX – Exemption(s) used for tract(s) where review is limited to a specific field, either from a prior year variance or agency referral.
- NA – Not actively applying an approved conservation plan or using an approved conservation system.
- ~~NA/ER – Conditionally applying a conservation system that meets the HELC requirements with a request for Equitable Relief. A request for Equitable Relief has been made by the USDA participant. The request has been based upon either of the following criteria:~~
- ~~• The USDA participant has violated the WC provisions, but has made a good faith attempt to comply.~~
  - ~~• The USDA participant has violated the WC provisions based on an error by a USDA employee.~~
  - ~~• The USDA participant has violated the WC provisions based on reliance upon USDA technical advice.~~
- Removed. Do not use.
- NN – No conservation plan is required. There are no HEL fields on the tract, or the tract is not planted to an agricultural commodity, or the tract is not in agriculture use
- PV – Potential/suspected wetland violation in the field/tract.
- ~~PV/ER – Potential wetland violation with a request for Equitable Relief. A request for Equitable Relief has been made by the USDA participant. The request has been based upon either of the following criteria:~~
- ~~• The USDA participant has violated the WC provisions, but has made a good faith attempt to comply.~~
  - ~~• The USDA participant has violated the WC provisions based on an error by a USDA employee.~~
  - ~~• The USDA participant has violated the WC provisions based on reliance upon USDA technical advice.~~
- Removed. Do not use.
- TA – Exemption(s) used for tract(s) when deficiencies are found while providing technical assistance.

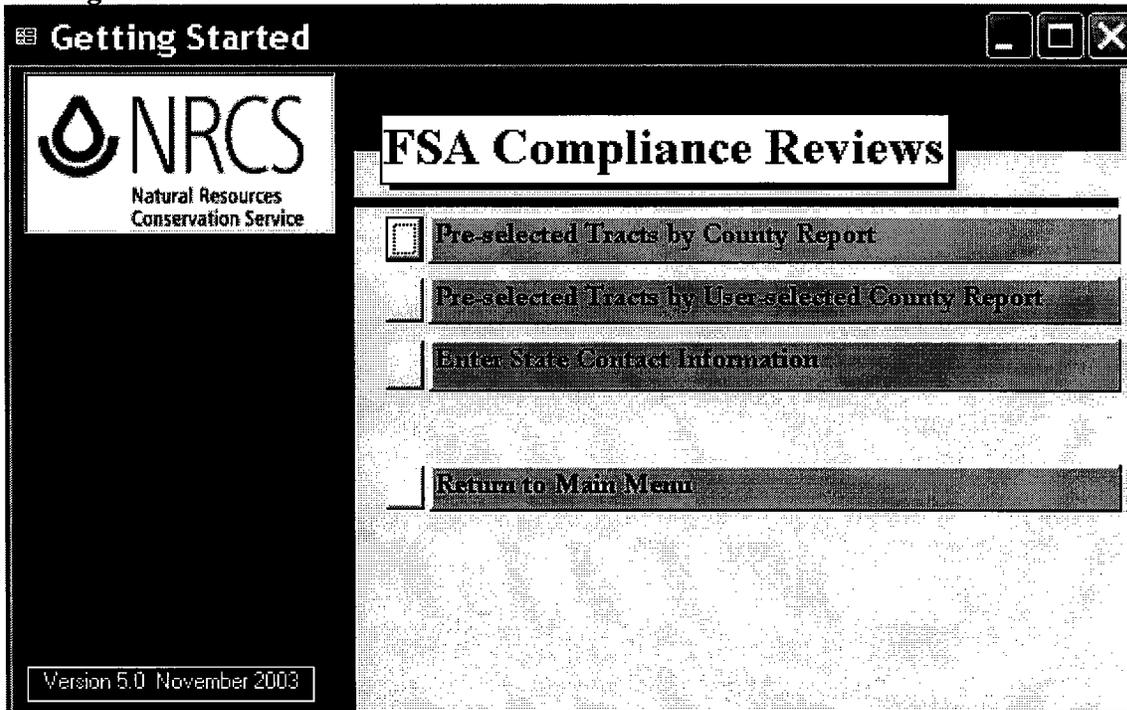
UA – All of the conservation plan practices, or the approved conservation systems are being maintained to the required specifications and standards

Copies of Menu System for FSA Compliance Review Database Application

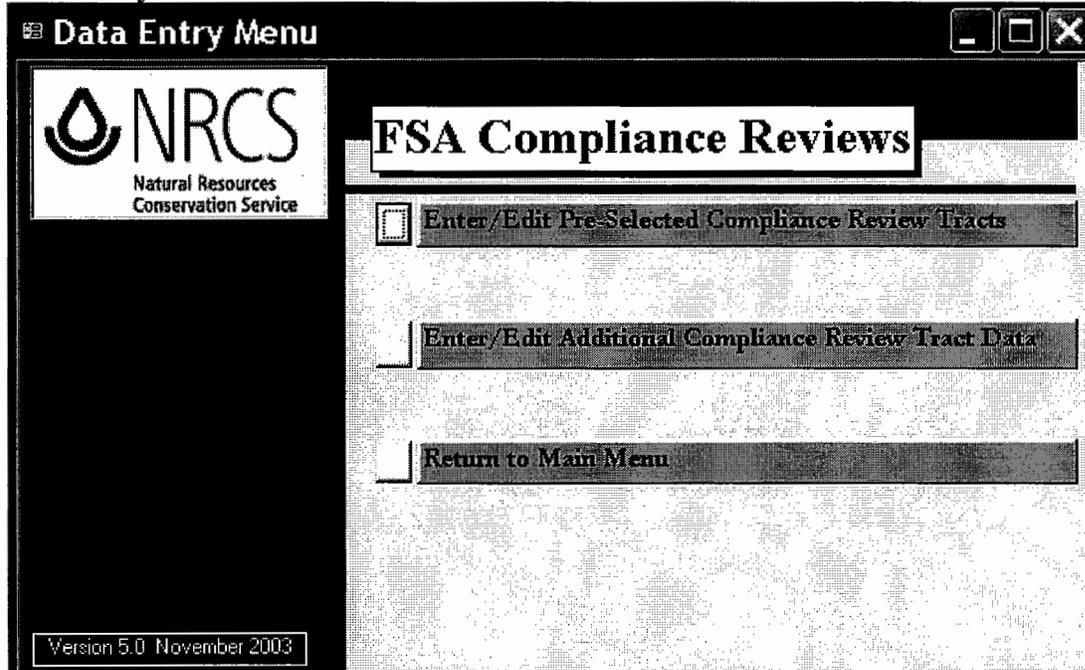
Main Menu:



Getting Started:



Pre-Selected means the tracts were sent to the States as part of the sample tracts for the current year.

**Data Entry:**

Fips codes, tract numbers, county name, and category are already supplied in sample tracts.

**Data Entry Form**

**FSA Compliance Review - 2003  
Pre-selected Tracts**

← Find Record →  
Return to Main Menu

Tennessee

Administrative FIPS	47003	Bedford	Valid Tract Check	
Location FIPS	47003	Bedford	<input type="radio"/> Valid Tract	
Tract No.	1599	New Tract No.	<input type="radio"/> Not a Valid Tract	
Category	R - Random (HEL)		<input type="radio"/> Tract Not Found	
Review Type	<input type="radio"/> Full Review <input checked="" type="radio"/> Limited Review	Is This Review Part of a Quality Assurance Plan?	<input type="radio"/> Yes <input checked="" type="radio"/> No	Crop Year: 2003
Time Spent (hr.)	2.00	Wetlands Present on Tract (Y/N)?	<input checked="" type="radio"/> No	
Total Acres of Evaluated Tract		Compliance Rev Determination Code	PV / ER - Potential wetland violation with a request for equitable relief	
Comments				

Record: 1 of 11

Additional Compliance review tracts means the State adds tracts that received variances, Farm Credit borrower tracts, employee owned farm tracts, whistleblower complaints, etc.

**State Data Tracts**

**FSA Compliance Review - 2003**  
**State-selected Tracts**

Tennessee

Administrative FIPS: 47005 Administrative County: [ ]  
 Location FIPS: 47005 Location County: [ ]  
 Tract No.: [ ] New Tract No.: [ ]

Crop Year: 2003 Is This Review Part of a Quality Assurance Plan? Yes [ ] No [ ]

Valid Tract Check: Valid Tract [ ] Not a Valid Tract [ ]

Review Type: Full Review [ ] Limited Review [ ]

Category: W - Random (Wetlands) Time Spent (hr.): 23  
 Wetlands Present on Tract (Yes/No)? Yes [ ] Total Acres of Evaluated Tract: 2345.0  
 Compliance Rev Determination Code: NN - Plan not needed

Comments: [ ]

Record: 1 of 7

When tracts are entered by States, all information needs to be completed.

**New in 2003:** Additional information is being collected on valid tract check, Wetland violation, and determination codes 'NN' and 'NC'.

Additional tract information screen:

**Tract Status Update**

Location: 47005 Tract Number: 5

Has Tract Number Changed Due to Reconstitution? Yes [ ] No [ ]

Have Commodity Crops Been Grown on Tract Last Year? Yes [ ] No [ ]

If no Commodity Crop, what benefits were received?  
 [ ]

Return to Previous Screen

Record: 1 of 1 (Filtered)

Additional wetlands violation data collection:

**Wetlands Conditions Update**

Location	Tract Number
47005	5

Is there an existing "certified" wetlands determination for this area?  Yes  No

Is there any potential wetlands violation on tract?  Yes  No

Please explain possible violation.

Return to Previous Screen

Record: 1 of 1 (Filtered)

Additional data collected on determination codes 'NN' or 'NC':

**Condition**

Location	Tract Number
47005	5

Explain the selection of 'NN' or 'NC' determination

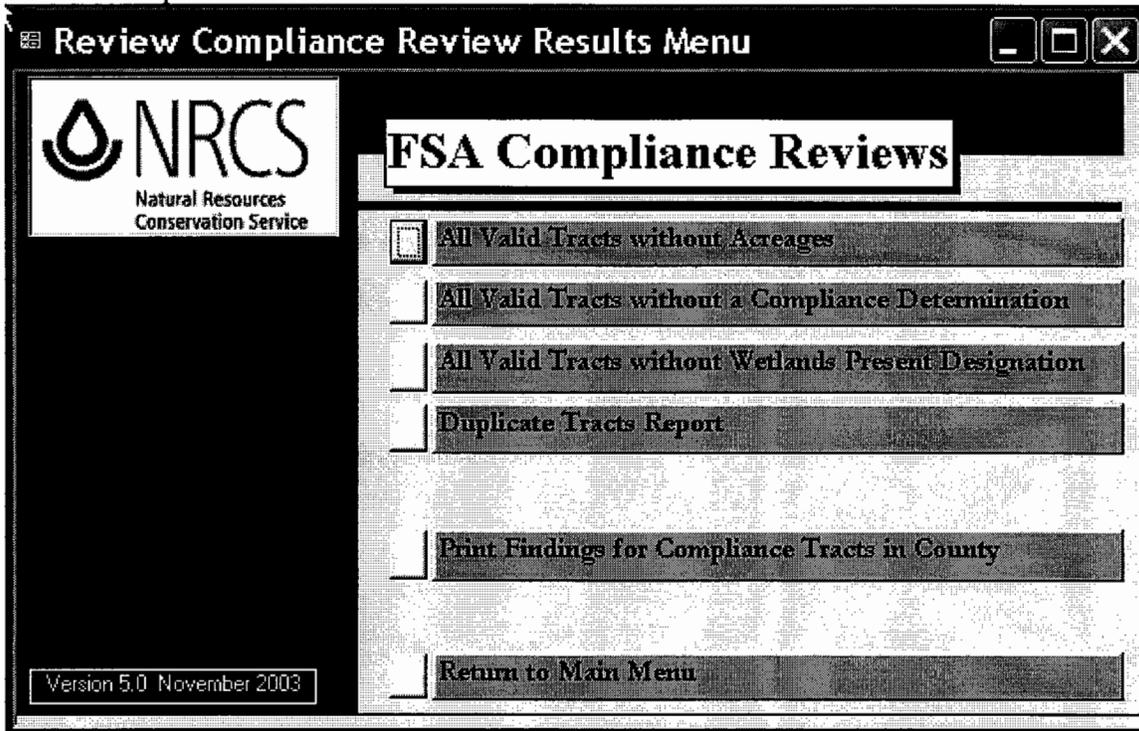
Return to Previous Screen

Record: 1 of 1 (Filtered)

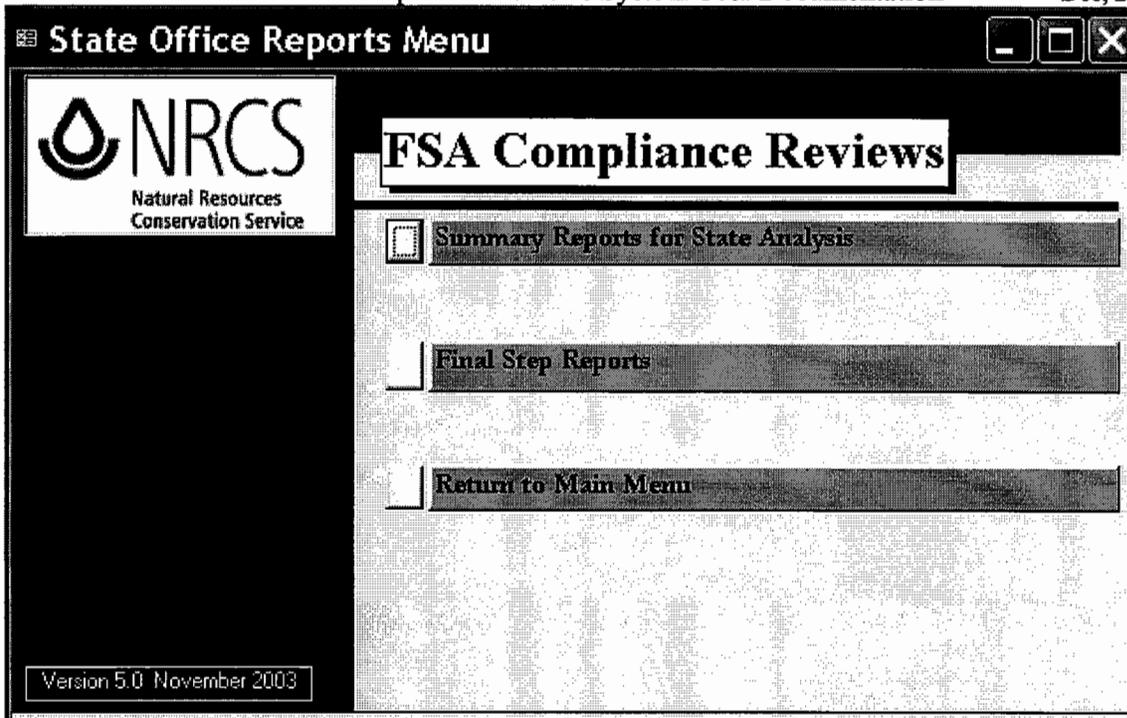
Field Office should use before sending to State.

New this year: Print Findings for Compliance Tracts in County.

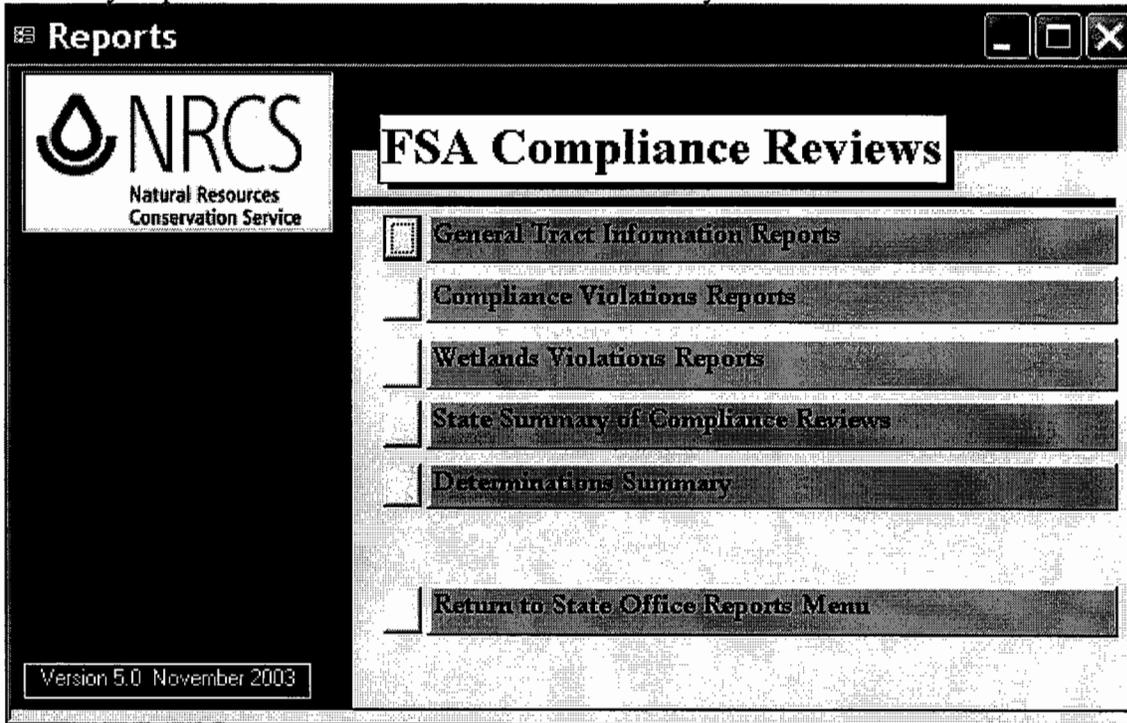
Review Compliance Review Results:



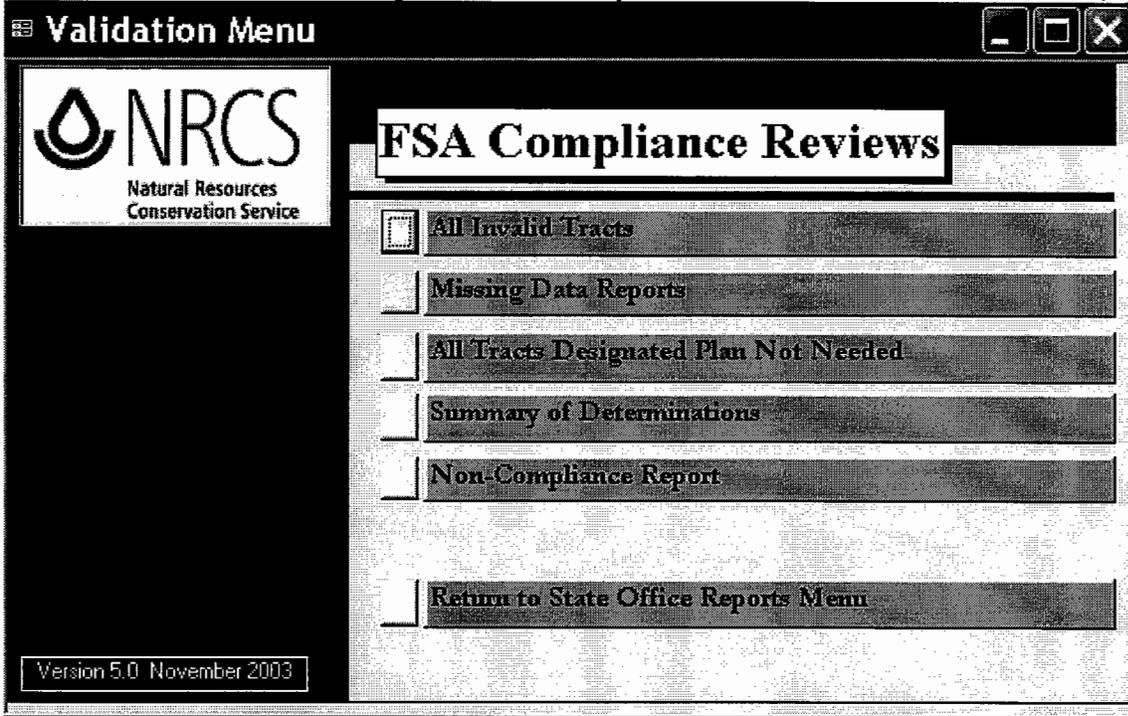
This menu should be used after all the field office databases have been synchronized.  
State Office Final Steps Menu:



Summary Reports for State Office after all data has been synchronized.



State Office final steps menu to identify any missing data and summary reports.



- (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.<sup>1201-5</sup>
- (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.**<sup>1211-1</sup>

(a) IN GENERAL.—Except as provided in section 1212, and notwithstanding any other provision of law,<sup>1211-2</sup> 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—<sup>1211-3</sup>

(1)<sup>1211-4</sup> as to any commodity produced during that crop year by such person—

(A)<sup>1211-5</sup> 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)<sup>1211-6</sup> a disaster payment; or

(D)<sup>1211-7</sup> 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-

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

<sup>1211-1</sup>Sec. 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".

<sup>1211-2</sup>Sec. 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,".

<sup>1211-3</sup>Sec. 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".

<sup>1211-4</sup>Sec. 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).

<sup>1211-5</sup>Sec. 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.

<sup>1211-6</sup>Sec. 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".

<sup>1211-7</sup>Sec. 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,<sup>1211-8</sup> 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)<sup>1211-9</sup> 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)<sup>1211-10</sup> 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)<sup>1211-11</sup> **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)<sup>1212-1</sup>(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,<sup>1212-2</sup> such person shall have until January 1, 1995, to comply with the plan

<sup>1211-8</sup> 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".

<sup>1211-9</sup> 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".

<sup>1211-10</sup> 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).

<sup>1211-11</sup> Subsec. (b) added by sec. 2002(a)(2) of the Farm Security and Rural Investment Act of 2002, P.L. 107-171, 116 Stat. 283.

<sup>1212-1</sup> 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).

<sup>1212-2</sup> 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.<sup>1214-1</sup> [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.<sup>1215-1</sup>

(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.<sup>1221-1</sup>

(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

<sup>1214-1</sup> 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.

<sup>1215-1</sup> 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.

<sup>1221-1</sup> 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) <sup>1221-2</sup> **WETLAND CONVERSION.**—<sup>1221-3</sup> Except as provided in section 1222 and notwithstanding any other provision of law, any person who in any crop year beginning after November 28, 1990, <sup>1221-4</sup> 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) <sup>1221-5</sup> for that crop year and all subsequent crop years.

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

<sup>1221-2</sup> 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.

<sup>1221-3</sup> 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".

<sup>1221-4</sup> 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,".

<sup>1221-5</sup> 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)".

<sup>1221-6</sup> 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) <sup>1221-7</sup> 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.** <sup>1222-1</sup> [16 U.S.C. 3822] **DELINEATION OF WETLANDS; EXEMPTIONS.**

(a) <sup>1222-2</sup> **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) <sup>1222-3</sup> **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.

<sup>1221-7</sup> 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).

<sup>1222-1</sup> 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.

<sup>1222-2</sup> 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).

<sup>1222-3</sup> 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).





