



Natural Resources Conservation Service
9173 W. Barnes Drive, Suite C
Boise, Idaho 83709
(208) 378-5700

November 27, 2006

NATIONAL FOOD SECURITY ACT MANUAL, Fourth edition
180-V NFSAM
(Parts 518.02 and 518.03)
Idaho Notice No. 13

Subject: CPA- National Food Security Act Manual, Sections 518.02 and 518.03

Purpose: To distribute Amendments 2 and 3 of the NFSAM

Effective Date: Upon receipt, beginning with the 2007 FSA status review tract list

Background: Part 518.02, Tract Selections, was amended in August 2006. Part 518.03, Review of and Adjustment to the Compliance Review List, was amended in October 2006. The guidance provided by National Headquarters (NHQ) is to "clarify" when tracts on the national tract list are to be replaced. Review the guidance and implement information beginning with the 2007 status review year.

The electronic version of the NFSAM can be accessed at the following NRCS web site:
<http://policy.nrcs.usda.gov/>. Scroll down to the National Food Security Act Manual.

Divisions should request additional guidance on this change, through appropriate channels, from their Area Office. If more help is needed, contact Ralph Fisher, State Agronomist, at (208) 378-5730 or e-mail at ralph.fisher@id.usda.gov.

Filing Instructions:

- Remove pages 518.A.02-1, 518.A.02-2, 518.A.03-1 and 518.A.03.2
- Insert pages 518.A.2-1, 518.A.2-2 and 518.A.3-1 through 518.A.3-4

 *RICHARD W. SIMS*
ACTING

RICHARD W. SIMS
State Conservationist



518.02 - - Tract Selections

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.
- Tracts referred by other USDA agencies (See also NFSAM Part 520, Subpart C, Section 520.04).
- Tracts of USDA participants requesting reinstatement.
- Tracts where a variance or exemption was granted the previous year.
- CRP contracts early contract termination.

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

d Optional State and Local Tract Selections

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

- Findings from the previous year's compliance review or quality assurance review.
- Either a high or low percentage or number of NA or PV determinations from the current or previous year's compliance review findings.
- A high percentage or number of recurring variances. (Exception: variances issued for a disaster).

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

e Tract Selection Category Codes

Compliance review tracts shall be coded as follows:

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

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

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

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

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

[M.180.518.A.02 Amendment 2 - August 2006]

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 Requirements for Review and Tract Replacement

If, through tract reconciliation or other means, there still remains a concern that a tract may not be subject to the compliance provisions, the following table provides general guidance for replacing those tracts. However, it must be remembered that a compliance review is a two-fold process — tracts must be reviewed for compliance with **both** HELC and WC provisions. Even if there are no annually tilled commodity crops being produced on the tract, a program participant is still responsible for complying with the WC provisions, and NRCS must ensure appropriate compliance.

STEP	ACTION	
1	Determine if there have been or are USDA benefits that are subject to the HELC/WC provisions, received by those persons affiliated with the tract. USDA benefits subject to the compliance provisions are as follows:	
	<p align="center">HELC Compliance (16 U.S.C. § 3811 (a))</p>	<p align="center">WC Compliance Only (16 U.S.C. 3821)</p>
	<p>Contract payments received under a production flexibility (or successor) contracts, marketing assistance loans, and any type of price support or payment made available under the Agricultural Market Transition Act, or the CCC Charter Act (15 U.S.C. 714 <i>et seq.</i>), or any other Act.</p>	<p>Contract payments received under a production flexibility (or successor) contracts, marketing assistance loans, and any type of price support or payment made available under the Agricultural Market Transition Act, or the CCC Charter Act (15 U.S.C. 714 <i>et seq.</i>), or any other Act.</p>
<p>Farm storage facility loans made under §4(h) of the CCC Charter Act (15 U.S.C. 714b(h)).</p>	<p>Not applicable to WC.</p>	

STEP	ACTION	
	Disaster payments.	Not applicable to WC.*** Certain forms of disaster payments may be subject to the WC provisions.
	Loans made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 <i>et seq.</i>) or any other provision of law administered by FSA, if it is determined that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of HEL.	Loans made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 <i>et seq.</i>) or any other provision of law administered by FSA, if it is determined that the proceeds of such loan will be used for a purpose that will convert a wetland.
	Payments made under §§ 4 or 5 of the CCC Charter Act (15 U.S.C. 714b or 714c) during such crop year for storage of an agricultural commodity acquired by the CCC.	Not applicable to WC.
	Any payment made pursuant to a contract entered into under Title XII, Subtitle D (16 U.S.C. 3801 <i>et seq.</i>).	Any payment made pursuant to a contract entered into under Title XII, Subtitle D (16 U.S.C. 3801 <i>et seq.</i>).
	Any payment made under §§ 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 or 2202).	Any payment made under §§ 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 or 2202).
	Payments, loans or other assistance made under §§ 3 and 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 or 1006a).	Payments, loans or other assistance made under §§ 3 and 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 or 1006a).
	Do any of the listed conditions apply? If YES, proceed to step 2. If NO, code the tract NN, review not needed and document the reason why the tract review is not needed from the following drop down menus: SELECT APPROPRIATE REASON	
2A	Determine whether there are annually tilled agricultural commodity crops being produced on the tract. GO TO STEP 2B	
2B	Determine whether there is land that is or can be determined as being HEL on the tract where agricultural commodity crops (or sugarcane) are being produced. Go to step 2C.	
2C	Determine if there is land that is or should be determined to be a wetland on a tract where agricultural commodities are being produced or where production of	

STEP	ACTION		
	such might be made possible. Proceed to step 2D		
2D	<p>If the answer to steps 2 A, B, and C are NO, then stop here. Code the tract NN. Select the appropriate reason from the drop down box provided: SELECT APPROPRIATE REASON</p> <p>If YES, proceed to step 3.</p>		
3	<p>IF there have been...</p>	<p>AND there is or could be...</p>	<p>THEN...</p>
	<p>USDA benefits either pending or received that are subject to the HELC provisions and annually tilled agricultural commodity crops (or sugarcane) are being produced on the tract;</p>	<p>Land determined to be HEL and/or land that is or can be determined to be wetland;</p>	<p>A compliance review must be done when the tract is randomly selected. Stop here and perform the compliance review of the tract. If this step does not apply, go to Step 4.</p>
	<p>USDA benefits either pending or received that are subject to the WC provisions and annually tilled agricultural commodity crops (or sugarcane) are being produced on the tract; or wetland has been converted for the purpose or to make possible production of an agricultural commodity.</p>	<p>Land determined to be wetland or can be determined to be a wetland;</p>	<p>A compliance review must be done when the tract is randomly selected. Stop here and perform the compliance review of the tract. If this step does not apply, go to Step 4.</p>
4	<p>If there are no USDA benefits either pending or received that are subject to either of the provisions, then replace the tract by using either of the following methods—</p> <ul style="list-style-type: none"> • Select the next sequentially numbered tract in the county that meets the above requirements. • Select a tract with a Title XII conservation program assistance contract, (i.e., CSP, CRP, EQIP, FRPP, GRP, WHIP or WRP). 		
5	Perform the compliance status review.		
6	<p>If no such tracts meeting the above criteria can be found, notify the Operations Management and Oversight Division (OMOD) and the Conservation Planning and Technical Assistance Division (CPTAD) for a waiver from the compliance review requirements for that specific county. All waiver requests must be in writing and</p>		

STEP	ACTION
	must set out the reasons why the specific county needs to be exempted from compliance reviews for the current year. All waivers must be requested by the State Conservationist or designee. Code the tract NN and select NN due to Waiver from the drop down box. SELECT APPROPRIATE REASON

NOTE: A tract may currently be listed as 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 may not be up to date and may not reflect changes that affect the need for a compliance review and/or the separation of the tract from the original farming concern.

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.