



U.S. Department of Agriculture
Office of Inspector General
Great Plains Region
Audit Report

Natural Resources Conservation Service
Effectiveness of Status Review
Process In Kansas



Report No.
10099-9-KC
August 2002



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Great Plains Region - Audit
5799 Broadmoor, Suite 600
Mission, Kansas 66202



DATE: August 8, 2002

REPLY TO
ATTN OF: 10099-9-KC

SUBJECT: Effectiveness of Status Review Process In Kansas

TO: Harold L. Klaege
State Conservationist
Natural Resources Conservation Service

This report presents the results of our review of the Natural Resources Conservation Service status review process in Kansas. Your July 19, 2002, response to the draft report is included as exhibit B, with excerpts and the Office of Inspector General's position incorporated into relevant sections of the report.

Your response to the draft report indicated general disagreement with the presentation of findings; however, the planned corrective actions were consistent with the audit recommendations as presented. Editorial clarifications were made to this report where appropriate. While we continue to believe that Area office reviews of compliance determinations and the granting of special problem variances were inappropriately used to afford certain producers extended opportunities to achieve compliance with the conservation initiatives, we consider the planned corrective actions sufficient to achieve management decision for each of the audit recommendations included in the report. Please note that Departmental Regulation 1720-1 requires that final action be taken within one year of each management decision. In order for final action to be achieved, the planned actions for each management decision must be implemented and/or completed. You should follow your internal agency procedures for forwarding correspondence concerning final actions to the Office of the Chief Financial Officer.

/s/

DENNIS J. GANNON
Regional Inspector General
for Audit

EXECUTIVE SUMMARY

NATURAL RESOURCES CONSERVATION SERVICE EFFECTIVENESS OF STATUS REVIEW PROCESS IN KANSAS

AUDIT REPORT NO. 10099-9-KC

RESULTS IN BRIEF

This report presents the results of our evaluation of the Natural Resources Conservation Service (NRCS) status review activities in Kansas. The review was initiated

in response to a whistleblower complaint alleging improper administration of highly erodible land conservation (HEL) provisions within one administrative area in the State of Kansas that resulted in preferential treatment for certain producers. To remain eligible for U.S. Department of Agriculture (USDA) program payments, agricultural commodities produced on highly erodible land (HEL) must be produced in compliance with a conservation plan or conservation system that conforms to the NRCS technical standards set forth in the local field office technical guide (FOTG). NRCS performs status reviews to test producer compliance with the HELC provisions. A status review is a technical review designed to determine if a producer is applying an approved conservation plan or system on a specified tract of land.

Our review substantiated allegations that HELC provisions were not always properly administered and that some producers were granted questionable variances that allowed them to maintain their eligibility for USDA benefits. We found that application of a Kansas State office procedure, requiring Area office reviews of preliminary adverse compliance determinations, resulted in the reversal of some preliminary compliance determinations based on procedural flaws. This resulted in the granting of variances that effectively allowed producers additional time to comply with HEL provisions without the loss of USDA program payments for non-compliance. Also, limited documentation was available to show what was reviewed and concluded at the Area office level.

We also identified specific cases where special problem (AH) variances were approved for circumstances that did not appear to meet the established criteria. We further noted that confusion existed as to when NRCS personnel were to request a Farm Service Agency (FSA) form to notify personnel that a determination of producer eligibility for USDA benefits was needed. Also, potential compliance deficiencies, identified when providing technical assistance, were not always subject to follow-up status reviews. These conditions reduced assurance that a key control

was effective in assessing producer compliance with HEL provisions, which support the eligibility determination for USDA program benefits.

KEY RECOMMENDATIONS

We recommend that the Kansas State Conservationist clarify the State procedure to clearly show what is expected from the Area office review of preliminary adverse compliance determinations; the need to evaluate compliance determinations based on circumstances that exist at the time a status review is conducted; and the documentation requirements for conclusions reached by Area office staff. Also, we recommend that the criteria for approval of variances, based on the existence of special problems and performance of status reviews for compliance deficiencies noted while providing technical assistance, be reviewed with State personnel. This includes clarification on when to request and complete Forms FSA-569, NRCS Report of HELC and Wetland Conservation Compliance for Spotcheck Purposes.

NRCS RESPONSE

The Kansas State office disagreed with the presentation of findings, but agreed to undertake corrective actions that were consistent with the audit recommendations.

The planned corrective actions are scheduled for completion prior to the 2003 status review season, which is January 1, 2003.

OIG POSITION

We maintain our position that Area office reviews of compliance determinations and the granting of AH variances were inappropriately used to prevent producers from being found non-compliant with the HELC provisions. However, we consider the planned corrective actions and timeframes for implementation of such actions sufficient to achieve management decision for the recommendations included in the report.

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INTRODUCTION

BACKGROUND

The Food Security Act of 1985, Public Law 99-198, sets forth USDA's highly erodible land (HEL) conservation provisions. Legislation that authorized changes to the Act included Public Law 101-624, the Food, Agriculture, Conservation, and Trade Act of 1990, and Public Law 104-127, the Federal Agriculture Improvement and Reform Act of 1996.

The Food Security Act requires producers to meet specified requirements for HEL in order to remain eligible for certain United States Department of Agriculture (USDA) program benefits. Beginning January 1, 1995, agricultural commodities produced on HEL must be produced in compliance with a conservation plan or conservation system that conforms to the Natural Resources Conservation Service (NRCS) technical standards set forth in the local field office technical guide (FOTG). The Code of Federal Regulations, Title 7, part 12, provides regulations applicable to the highly erodible land conservation (HEL) provisions. These regulations specify that a conservation system is a combination of one or more conservation measures or management practices designed to reduce soil erosion to the acceptable level applicable to the HEL cropland. National Food Security Act Manual (NFSAM) procedures require the conservation system to include treatment, as applicable, for the control of: sheet and rill erosion; wind erosion; and ephemeral gully erosion. The conservation plan is a document that describes the conservation system.

The Food Security Act, as amended, authorizes a producer to maintain eligibility for USDA benefits in certain circumstances when the producer is not in compliance with a conservation plan or system. Producers who act in good faith and without intent to violate the HELC provisions are allowed up to a year to implement the measures and practices necessary to be considered actively applying the conservation plan. The Farm Service Agency (FSA) is responsible for good faith determinations. Regulations authorize a similar exception, without the good faith requirement, for situations where NRCS identifies possible violations while providing on-site technical assistance. The law also authorizes variances from the HELC provisions for failures that are minor and technical in nature, due to circumstances beyond the control of the producer, or when the producer has a specific problem related to weather, pest, or disease.

NRCS performs status reviews to test producer compliance with the HELC provisions. A status review is a technical review for a tract of land designed to determine if a producer is applying an approved conservation plan or system. Status reviews provide information to USDA agencies, conservation districts, and the public on implementation progress and problems. The NRCS National office selects a random sample of tracts for status review. Additional tracts are selected for review based on referrals from other agencies, whistleblower complaints, potential violations observed by NRCS employees, and tracts that maintained eligibility due to prior year variances.

OBJECTIVES

The primary objective of the review was to evaluate the administration of the status review process in Kansas. The review was initiated in response to a whistleblower complaint alleging improper administration of the HELC provisions within one administrative area in the State of Kansas that resulted in preferential treatment for certain producers.

SCOPE

The audit was performed at the Kansas NRCS and FSA State offices, two NRCS Area offices, three NRCS field offices, and two FSA county offices (see exhibit A for a listing of sites visited). Kansas was judgmentally selected for the review, based on receipt of a whistleblower complaint alleging improper administration of the HELC provisions by NRCS employees. Area and field office locations were judgmentally selected for review based on high numbers of requested and approved variances. Fieldwork was conducted between May 2000 and July 2001 and included reviews of HELC and status review activities from 1995 through 2000.

We reviewed records for 28 judgmentally selected tracts at the area and field locations visited. Tracts were judgmentally selected for review based on status review results indicating potential non-compliance. We noted that about 250 tracts were subject to status reviews within the three field locations visited for the period covered by our review. During this same timeframe, over 10,000 status reviews were conducted across Kansas.

The audit was conducted in accordance with Government Auditing Standards.

METHODOLOGY

At the NRCS and FSA State offices, we interviewed agency personnel and reviewed records to obtain background information, identified agency policies, procedures, and internal control processes applicable to the HELC provisions, identified any potential problem areas, and selected sites for field verifications. At the

NRCS State office, we reviewed HELC files related to appeals, variance requests, and other correspondence. At the FSA State office, we reviewed the minutes of State committee meetings, correspondence files, and appeal files applicable to the HELC provisions.

At the NRCS Area offices, we conducted interviews and performed record reviews similar to those performed at the NRCS State office. In addition, we reviewed the 1998, 1999, and 2000 Kansas State Quality Assurance Plans and a sample of Area office summary reports showing the quality control review results for each field office.

At the field/county office level, we interviewed NRCS and FSA personnel to obtain background and detail information on the status review process. For selected sample tracts, we reviewed available documentation including Form AD-1026 (Referrals for HEL Determinations), Form FSA-569 (NRCS Report of HELC and Wetland Conservation Compliance for Spotcheck Purposes), aerial photography, conservation assistance notes, conservation plans, soil loss computations, status review results, practice maintenance plans, and various correspondence, including requests for variances. Interviews of agency personnel were conducted, as necessary, to obtain information and provide clarification of transpired events.

FINDINGS AND RECOMMENDATIONS

CHAPTER 1	STATUS REVIEW PROCESS NOT ALWAYS FUNCTIONING AS INTENDED
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The status review process, as administered in Kansas, did not always function as intended to accurately evaluate and report on producer compliance with the HELC provisions. This occurred because various procedures were not clear and subject to misinterpretation. Specifically, these procedures related to the required review of preliminary non-compliance determinations by Area office personnel, the criteria for granting AH variances, the process for reporting non-compliance determinations to FSA, and the performance of follow-up status reviews for deficiencies noted while providing technical assistance. This allowed producers who had not achieved compliance with the HELC provisions to maintain their eligibility for USDA benefits.

FINDING NO. 1

COMPLIANCE DETERMINATIONS

A Kansas State office procedure designed to ensure the propriety of HELC compliance determinations effectively circumvented the status review process as implemented. This occurred because Area office personnel did not assess whether the producers applied an

acceptable conservation system at the time of the status review for several cases reviewed. Required technical and policy assistance requests from Area office personnel, with respect to preliminary adverse determinations of compliance with the HELC provisions at the field office level, resulted in termination of the status review process once a variance was granted. Additional conservation planning to achieve future conservation compliance was then initiated. As a result, producers who refused to apply or maintain practices required for HELC compliance remained eligible for USDA program benefits.

Kansas procedure¹ requires that prior to producer notice of adverse preliminary technical determination, the District Conservationist (DC) is responsible for requesting technical or policy assistance from the Area Conservationist. At the Area office Assistant State Conservationist's discretion, that assistance may involve Area and/or State specialists. The goal of that assistance is to assure (1) the agency determination is correct

¹ NRCS 180-GM, (Amend. KS9), KS410.18, dated December 1997.

and (2) the administrative record documentation is complete. However, specific documentation requirements for these determinations are not spelled out in procedures.

We reviewed supporting documentation for three tracts of land administered by one field office that involved Area office participation in the assessment of producer compliance with the HELC provisions. A total of 112 tracts were subject to status review by the field office for the period 1995 through 2000. The three tracts were selected for review based on allegations of potential problems with respect to producer cooperation and Area office intervention in the compliance determination process. In each case, the field office reached a preliminary determination that producers were not in compliance with the HELC provisions. Our reviews of the conservation case files supported that producers had not applied, nor had they agreed to apply, all necessary conservation treatments to achieve compliance with the HELC provisions.

For example, producers for one tract of land submitted a Form AD-1026, Highly Erodible Land and Wetland Conservation Determination, dated December 14, 1999, showing that an agricultural commodity was to be planted on land requiring an HEL determination. On December 16, 1999, field personnel verbally informed one of the producers of the need to obtain a conservation plan and to retain established grass in designated areas subject to ephemeral gully erosion. On March 16, 2000, field personnel determined 60.5 acres of HEL in two fields. The supporting Form AD-1026 included a statement that the producer needed to use an approved conservation system on all HEL to maintain eligibility for USDA program benefits. The field office also forwarded the producers a notification that sodbusted fields were required to have an acceptable conservation system applied before planting of the first crop.

On April 13, 2000, the DC and the field office soil conservationist conducted a field visit, during which they met with the producers and discussed needed conservation work. Since the land was already tilled, the DC informed the producers of the need to seed the bottoms of two draws to grass or alfalfa. The producers did not wish to seed the draws; consequently, the DC agreed to a trial no-tillage system to control erosion. Later that day, the DC contacted the producers by telephone to inform them that proper control of ephemeral gully erosion would require reseeding of the designated areas. The producers did not reseed the draws, yet planted a crop on HEL on/or about April 17, 2000.

A conservation plan developed and approved by the field office on May 22, 2000, included practices applicable to the two draws. In June 2000 the Area office Engineer determined that one of the draws did

not require reseeding, and the second draw did not require reseeding if reshaped as a cropped waterway. Conservation assistance notes, dated June 12, 2000, supported that the Area office Assistant State Conservationist, and the DC visited the field on June 1, 2000, and discussed the probable need to request a Form FSA-569, NRCS Report of HELC and Wetland Conservation Compliance for Spotcheck Purposes (essentially constituting a compliance determination). This was due to the fact that a commodity crop had been planted on sodbusted ground. The notes also specified that Area office Assistant State Conservationist instructed the DC to request a Form FSA-569 to make a not actively applied determination, and to submit a request for variance based on untimely completion of the HEL determination, as well as untimely and incomplete presentation of conservation planning options.

While the cited procedure on requesting technical and policy assistance was established to ensure the accuracy of HELC compliance determinations, as well as the adequacy of supporting documentation, application of the procedure addressed neither of these concerns. Instead, involvement of the Area office Assistant State Conservationist resulted in consideration of additional planning options that represented the preferences of the producers and served to prevent timely determinations of producer compliance with the HELC provisions. Follow up with the producers in June 2001 supported that the two designated draws had been reseeded as originally recommended by the DC.

State office personnel said that the review policy was established to have one agency determination to help eliminate reversal of agency decisions when appealed. Our discussion of the cited case with Kansas State office personnel disclosed that they interpreted the Kansas State procedure to require Area office personnel to look to see if they concurred with the preliminary determination and that *ALL* NRCS policies and procedures were followed. If not, then the DC would be instructed by the Area office Assistant State Conservationist to request an AH variance. Once the variance was granted by the State Conservationist, there was no longer a non-compliance situation and conservation planning could begin.

We also found little documentation at the Area office to show what was reviewed and concluded at that level. Therefore, we could not determine that the Area office evaluated the conditions existing at the time the status review was performed by the DC. The absence of documentation provided the appearance that personnel began the review process by searching for procedural flaws to enable them to grant variances rather than determining whether the producer complied with HEL requirements.

RECOMMENDATION NO. 1

Revise Kansas State office procedure to clearly show what is expected from the Area office review on preliminary non-compliance determinations including clarification regarding

an assessment as to whether all NRCS policies and procedures have been followed prior to making a non-compliance determination and documentation of decisions reached. Also, ensure the Area office Assistant State Conservationists and all field offices fully understand the need to evaluate the propriety of compliance determinations based on circumstances that existed at the time a status review was conducted and that the Area office staff should document the results of their reviews and decisions regarding such determinations.

NRCS Response

The Kansas State office disagreed that a State office procedure designed to ensure the propriety of HELC compliance determinations effectively circumvented the status review process as implemented. The State office explained that policy concerns existed with respect to the cited example case, and that use of the procedure served as a review to determine if field level assessment that the producer was not using an approved conservation system was correct.

The Kansas State office agreed to revise procedure to identify expectations for the Area office review of preliminary non-compliance determinations, and to direct Area office Assistant State Conservationists to document findings and decisions from such reviews. The State office also agreed to issue a directive to ensure that Area office Assistant State Conservationists and all field offices understand the need to evaluate the propriety of compliance determinations based on circumstances that exist at the time a status review is conducted. Planned corrective action is scheduled for completion in advance of the 2003 status review season, which is January 1, 2003.

OIG Position

Although we support the intent of the State office procedure, we continue to believe that application of the procedure, in conjunction with the granting of AH variances for NRCS errors in following procedure, provided opportunities for agency personnel to extend the periods of time for producers to achieve compliance with the conservation provisions. While we do not agree with the State office assessment of transpired events, we consider the planned corrective action and timeframe for implementation sufficient for management decision.

FINDING NO. 2
SPECIAL PROBLEM VARIANCES

AH variances were improperly approved for producer situations that did not meet the established criteria. Area and State office personnel authorized AH variances based on agency errors even though producers were not actively applying approved conservation

systems. Approval of AH variances under these circumstances resulted in producers who were not compliant with the HELC provisions maintaining eligibility for USDA program benefits.

National office procedure² authorizes an AH variance when a producer is actively applying an approved conservation plan or is using an approved conservation system on all HEL fields, except that one or more scheduled practices are not applied because of a specifically identified problem unique to that producer. Unique problems include (1) a severe physical condition or death of the farm operator or family member that prevents the application of the scheduled practices, (2) destruction of a building or equipment by fire or similar situation, or (3) special problems or situations, including NRCS error, that prevent the producer from applying the practice.

We reviewed documentation related to three AH variances granted in 1999 and 2000 for two tracts of land serviced by one field office. We found that circumstances existing at the time status reviews were performed did not meet the criteria for variance based on the existence of special problems. We noted that the AH variances were authorized by Area and State level personnel based on field office delays in completing HEL determinations and failure to present all viable conservation planning options. However, our reviews of the conservation case files supported that the producers did not act to timely obtain approved conservation plans or apply approved conservation systems.

For example, an AH variance was approved for one tract of land in 1999, based on field office delay in completing an HEL determination for sodbusted land and lack of technical assistance in offering viable alternatives for development of a conservation plan. Records showed that on December 18, 1997, the producer requested an HEL determination for 175.0 acres to be planted to corn or alfalfa in May 1998. Although notified of the HEL determination, the producer did not contact the NRCS field office to develop a conservation plan prior to spring planting. In May 1998, the field office received a sodbusting complaint involving the subject tract. The tract was not subject to status review, as the producer filed a subsequent request for HEL determination on restructured field

² NRCS NFSAM, part 518.25 a, dated November 1996.

acres (increased acreages and redefined field boundaries) in May 1998. This request for HEL determination was not completed until January 1999, due to delays in obtaining official field boundaries from FSA. In May 1999, the producer planted 180.0 acres to corn and 69.1 acres to alfalfa.

Records showed that the producer had previously (1996 and 1997) reported intentions to sodbust other parcels of land and had worked with the field office to develop conservation plans for producing agricultural commodities on these lands. Thus, we concluded that the producer was familiar with the requirements for requesting an HEL determination and developing a conservation system to achieve acceptable soil loss. The producer was provided initial notification as to the existence of HEL in February 1998 and should have been accountable for applying an acceptable conservation system for the 1998 crop year. Despite the circumstances that prevented a determination of compliance for 1998, the producer was notified for a second time of the existence of HEL in January 1999, allowing sufficient time to work with the field office in developing a conservation plan prior to spring planting.

An AH variance was requested for the same tract of land in 2000 based on untimely approval of a conservation plan. The request for variance stated that the field office did not complete a conservation plan for sodbusted land until April 27, 2000, and that the producer did not sign the plan until May 25, 2000, after spring corn was planted. Our review of records supported that the producer was advised in 1998, 1999, and 2000 of the need to obtain a conservation plan or implement an approved conservation system on sodbusted land to remain eligible for USDA program benefits. Records further supported that the producer was not willing to implement the practices necessary to meet HELC requirements for sodbusted land until May 25, 2000.

RECOMMENDATION NO. 2

Review with all Area and field offices the criteria for variance based on existence of special problems. Review all requests for AH variances and only approve variances for

those situations that meet the criteria for special problems based on established National office policy.

NRCS Response

The Kansas State office disagreed that AH variances were improperly approved for producer situations that did not meet established criteria. They stated that adequate cause for approval of an AH variance can be found, if NRCS fails to follow its own policy, and such error in following

policy, has a significant impact on the producer's ability to apply a conservation system.

The State office agreed to issue a directive to review the criteria for variance, based on existence of special problems with all Area and field offices. Planned corrective action is scheduled for completion in advance of the 2003 status review season, which is January 1, 2003. The State office also agreed to review all AH variance requests and only approve variances for those situations that meet the criteria for special problems based on established National office policy.

OIG Position

We maintain that AH variances should only apply to situations where the producer is following an approved conservation plan or applying an approved conservation system on all HEL fields, except where one or more practices are not applied due to special problems unique to the producer. In our opinion, the producer situations in question did not meet the criteria for approval of an AH variance, as producers were not following an approved conservation plan or applying an approved conservation system. While procedure identifies NRCS error as a potential special problem for consideration of an AH variance, associated language stipulates that the error prevented the producer from applying the particular practice. In our opinion, while the HEL determinations were not always completed within the specified timeframes, producer notifications as to the existence of HEL were provided with sufficient lead-time to allow for development and application of approved conservation systems. We also question whether agency errors associated with failure to provide or consider all conservation planning options were appropriate, based on the sequence of events documented in the conservation notes.

While we do not agree with the State office approval of AH variances for the producer situations in question, we consider the proposed corrective action sufficient for achievement of management decision.

FINDING NO. 3

FORM FSA-569

Personnel at one field office did not always complete the reports on compliance situations to FSA on Form FSA-569, NRCS Report of HELC and Wetland Conservation Compliance for Spotcheck Purposes. In some instances, the Form FSA-569 was returned to FSA

without a documented compliance determination, per instructions from Area and State office personnel. We attributed this, in part, to confusion as to the appropriate time for requesting the form. As a result, FSA was

unsure of the actions to be taken for those forms returned without compliance determinations because they were requested in error.

FSA is responsible for determining whether persons are eligible for program benefits based on compliance with the HELC provisions. NRCS is responsible for technical determinations, including whether the land was cropped in a manner that meets HELC requirements. Form FSA-569 is the control document used to provide FSA with NRCS HELC compliance determinations. FSA issues Form FSA-569 to NRCS for a determination when a suspected violation is identified or when requested by NRCS. NRCS requests for Form FSA-569 are based on suspected or known violations identified through complaints, observations, or while performing status reviews. FSA cannot initiate an eligibility determination for a potential HELC violation without a Form FSA-569 showing that the field did not meet requirements of the HELC provisions.

Procedure³ requires NRCS to complete part C of Form FSA-569 to show whether the land was operated in a manner that meets HELC requirements. Procedure further requires NRCS to return Form FSA-569 to FSA when required entries are complete. FSA procedure⁴ requires the county office to report to the FSA State office any Forms FSA-569 for which NRCS does not make the required determinations within 60 days.

From a total of 15 forms referred to an NRCS field office during the period 1996 through 2000, we identified 3 forms that were returned to the FSA county office without documentation of a compliance determination. The remaining 12 forms were completed to show a compliance determination. In each case, NRCS requested the Form FSA-569 based on preliminary indications that producers for the tracts were non-compliant with the HELC provisions. In accordance with State office procedure, Area office personnel were requested to review the preliminary non-compliance determinations (see Finding No. 1). Conservation assistance notes for all three cases supported that Area and State office personnel instructed the DC to terminate the status review process and return the Form FSA-569, as if requested in error, when the Area office did not concur on the preliminary compliance determination or a variance was granted.

Kansas State office personnel stated that a compliance determination should be completed and documented on each Form FSA-569 requested by or referred to NRCS, but that NRCS field office staff should not request a Form FSA-569 until they have the Area office Assistant State Conservationist's concurrence on the compliance determination.

³ NRCS NFSAM, part 522.61, dated November 1996.

⁴ FSA Handbook, 6-CP, 604 B, Rev. 2, Amend 1, dated September 24, 1996.

RECOMMENDATION NO. 3

Provide written clarification to all Area and field offices that a compliance determination must be completed and documented on each Form FSA-569 requested from and/or received from the FSA county offices. In addition, notify all staff of the Kansas State office policy that DC's are not to request this form from FSA for status review tracts until they have concurrence on the preliminary compliance determination from the Area office Assistant State Conservationist.

NRCS Response

The Kansas State office provided clarification that agency policies only require NRCS to request Form FSA-569 after a non-compliance determination has been made and that agency requests for forms based on potential non-compliance were unnecessary. The State office agreed to issue a directive to review policy that NRCS should only request Form FSA-569 after a non-compliance determination has been made. Such directive will also clarify that a compliance determination must be completed and documented on each Form FSA-569 requested from and/or received from the FSA county office. Planned corrective action is scheduled for completion in advance of the 2003 status review season, which is January 1, 2003.

OIG Position

We accept the proposed management decision.

FINDING NO. 4
TECHNICAL ASSISTANCE
FOLLOW-UP

Personnel at one field office did not perform status reviews to follow up on potential compliance deficiencies noted while providing technical assistance to producers who requested, but did not receive, cost share assistance for planned conservation practices. Producers who requested, but did not receive, cost shares were not added to the list of required status reviews based on a field office philosophy that producers should not be penalized for voluntary efforts to apply conservation measures. As a result, producers who were potentially non-compliant with the HELC provisions remained eligible for USDA program benefits.

Procedure⁵ requires NRCS to inform the producer of actions or practices needed when potential compliance deficiencies are noted while providing routine technical assistance. The producer is required to agree to correct the deficiency, sign a conservation plan within 45 days, and implement the necessary conservation system within 1 year to maintain compliance with HELC provisions and eligibility for USDA benefits.

We reviewed documentation supporting the performance and results of status reviews for 8 of 19 tracts performed by one field office in 1999 and 2000. Conservation assistance notes for one of the tracts, dated May 20, 1998, showed that while checking terraces for rebuilding, field personnel identified deficiencies in existing terrace structures on two fields. Review of the tract folder did not disclose any documentation to support repair of these terraces. Conservation assistance notes, dated May 31, 2000, showed that one of the two fields was subject to a 2000 status review. On the same day, NRCS forwarded a letter to the producer stating that nearly all of the existing terraces and a waterway required repair. In addition, building of a new terrace and action to address ditches was required.

We interviewed the DC to determine why the producer was not required to address the deficiencies observed in 1998. The DC stated the producer requested technical assistance to obtain cost share to fix the terraces, but cost share was not provided. The DC further explained that producers who request, but do not receive, cost share are not included on the list of producers who will be determined noncompliant if all noted deficiencies are not corrected.

RECOMMENDATION NO. 4

Require Area office Assistant State Conservationists to evaluate the policies followed by field offices with respect to the performance of status reviews for compliance deficiencies noted while providing technical assistance. Based on results of this evaluation, determine whether issuance of a clarifying memorandum to all field offices is appropriate.

NRCS Response

The Kansas State office concurred that a potential HELC compliance deficiency observed while providing routine technical assistance is subject to a follow up status review, regardless of the presence or absence of cost share assistance. The State office agreed to require Area office Assistant State Conservationists to evaluate field office applications of policy on

⁵ NRCS NFSAM, part 520.21 c, dated August 1998.

HEL compliance deficiencies found while providing technical assistance, and to determine whether a clarifying directive to all field offices is appropriate. Planned corrective action is scheduled for completion in advance of the 2003 status review season, which is January 1, 2003.

OIG Position

We accept the proposed management decision.

EXHIBIT A – SITES VISITED

Natural Resources Conservation Service

- State Office - Salina, Kansas
- Area Offices - Hays, Kansas
- Manhattan, Kansas
- Field Offices - Seneca, Kansas (Nemaha County)
- Smith Center, Kansas (Smith County)
- Wakeeney, Kansas (Trego County)

Farm Service Agency

- State Office - Manhattan, Kansas
- County Offices - Seneca, Kansas (Nemaha County)
- Wakeeney, Kansas (Trego County)

EXHIBIT B – NRCS RESPONSE TO THE DRAFT REPORT



**United States Department of Agriculture
Natural Resources Conservation Service**

760 South Broadway
Salina, KS 67401-4642

Phone: 785-823-4500
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www.ks.nrcs.usda.gov

July 19, 2002

Mr. Dennis J. Gannon
Regional Inspector General for Audit
Office of Inspector General
Great Plains Region, Audit
5799 Broadmoor, Suite 600
Mission, Kansas 66202

Dear Mr. Gannon:

Attached is the Kansas Natural Resources Conservation Service (NRCS) response to the official draft report for the Effectiveness of Status Review Process in Kansas audit. Also included in the attachment are the planned corrective actions and their proposed completion dates.

If you have questions, please contact, Steven A. Parkin, Assistant State Conservationist, at (785) 823-4568, or by e-mail at steve.parkin@ks.usda.gov.

Sincerely,

A handwritten signature in black ink that reads "Harold L. Klaege".

ACTING FOR

HAROLD L. KLAEGE
State Conservationist

Attachment

cc: (w/attachment)

Mark W. Berkland, Director, Conservation Operations Division, NRCS, Washington, D.C.
Richard Van Klaveren, Regional Conservationist, NPR, NRCS, Lincoln, Nebraska
Steven A. Parkin, Assistant State Conservationist, NRCS, Salina, Kansas
Daniel H. Meyerhoff, Assistant State Conservationist, NRCS, Hays, Kansas

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

An Equal Opportunity Provider and Employer

**EFFECTIVENESS OF STATUS REVIEW PROCESS IN KANSAS
OIG OFFICIAL DRAFT – NRCS RESPONSE
JULY 19, 2002 (Amended July 31, 2002)**

FINDING NO. 1 – COMPLIANCE DETERMINATIONS

NRCS Response

The Kansas Natural Resources Conservation Service (NRCS) respectfully disagrees with the finding that a Kansas State Office issued procedure designed to ensure the propriety of HELC compliance determinations effectively circumvented the status review process as implemented. In the example case cited, the use of the procedure on requesting technical and policy assistance from the area level served as a review to determine if the not using an approved conservation system (NA) determination being considered was correct.

National Food Security Act Manual (NFSAM), Part 518.23(a), requires NRCS to determine whether a variance condition exists any time a NA determination is being considered.

There were NRCS policy concerns identified in this example case. NFSAM 512.10(e) states that, “NRCS, in providing technical assistance for conservation plans or systems, will provide the following information as appropriate: Cost-effective, applicable erosion control alternatives...”

The Area Office Assistant State Conservationist involvement that is referred to in the audit report as “consideration of additional planning options”, was in fact a technical review of a conservation treatment option that was presented by the producer, but rejected by field personnel. The review was needed to determine if the treatment option was technically viable. The review found the option to be viable, and therefore should have been considered as an applicable erosion control alternative in the conservation planning process. It was the NRCS finding that NRCS personnel erred in applying the cited planning policy to this case.

Another policy concern that occurred in the handling of this case related to timeliness of the HEL determination. NFSAM 511.0(c) provides that, “If the HEL determination is made in the NRCS office, then the determination will be completed within 15 calendar days.” The HEL determination for the example case was made in the office and took 91 days. This NRCS error in meeting policy impacted on the length of time the producer had to develop a conservation plan and apply a conservation system.

The NRCS failure to apply NRCS policies in this case resulted in incomplete and untimely planning assistance that prevented the producer from applying a conservation system by the required deadline.

A determination that variance conditions exist is an acceptable status review determination and effectively completes the status review process for that year. A follow up status review would be conducted in the year following issuance of a variance to determine if the reason for variance was alleviated, and if the producer was using an acceptable conservation system.

The Kansas NRCS considers the following audit report excerpt to be inaccurate.

“...Kansas State Office personnel disclosed that they interpreted the Kansas State procedure to require Area Office personnel to look to see if they concurred with the preliminary determination and that ALL NRCS policies and procedures were followed. If not, then the District Conservationist would be instructed by the Area Office Assistant State Conservationist to grant a special problem (AH) variance.”

From a policy perspective, only the state conservationist can grant an AH variance.

Concerning procedure application, the Kansas NRCS considers whether variance conditions exist case-by-case, based on the factors, technical criteria, and facts of the case. In applying AH variance policy, a determination is made whether a special problem prohibited application of the required conservation system. In keeping with policy, special problems include, “NRCS error that prevented the person from applying the practice.”

In past cases, the Kansas NRCS has found adequate cause for AH variance approval if the NRCS failed to follow its own policy, and that NRCS error in following policy had a significant impact on the producer’s ability to apply a conservation system.

CORRECTIVE ACTION PLANNED

The Kansas NRCS State Office will revise procedure to identify what is expected of the area office review on preliminary non-compliance determinations. The Kansas NRCS State Office will issue a directive to ensure that Area Office Assistant State Conservationists and all field offices understand the need to evaluate the propriety of compliance determinations based on the circumstances that exist at the time a status review is conducted. Area Office Assistant State Conservationist will be directed to document their findings and decisions from the

preliminary non-compliance review process. This corrective action will be completed in advance of the 2003 status review season, by January 1, 2003.

FINDING NO. 2 – SPECIAL PROBLEM VARIANCES

NRCS Response

The Kansas NRCS respectfully disagrees that special problem (AH) variances were improperly approved for producer situations that did not meet established criteria.

The Kansas NRCS considers whether variance conditions exist case-by-case, based on the factors, technical criteria, and facts of the case. In applying AH variance policy, a determination is made whether a special problem prohibited application of the required conservation system. In keeping with policy, special problems include, “NRCS error that prevented the person from applying the practice.”

In past cases, the Kansas NRCS has found adequate cause for AH variance approval if the NRCS failed to follow its own policy, and that NRCS error in following policy had a significant impact on the producer’s ability to apply a conservation system.

CORRECTIVE ACTION PLANNED

The Kansas NRCS State Office will issue a directive to review the criteria for variance based on existence of special problems with all area and field offices. This corrective action will be completed in advance of the 2003 status review season, by January 1, 2003.

The Kansas NRCS State Office will review all AH variance requests and only approve variances for those situations that meet the criteria for special problems based on established national office policy. This action will be ongoing.

FINDING NO. 3 – FSA FORM-569

NRCS Response

The Kansas NRCS would like to clarify that NRCS and Farm Service Agency policies only require NRCS to request Form-569 after a non-compliance determination has been made. Any NRCS requests for Form-569 for potential non-compliance were unnecessary.

The NFSAM 518.31(a) provides that NRCS will request FSA to provide an FSA-569 within 7 days of making a determination of:

- **not actively applying the conservation plan;**
- **not using an approved conservation system;**
- **not having been allowed access to the farm;**
- **violations of wetland conservation provisions.**

The FSA policy contained in 6-CP Paragraph 601(G) states, “FSA-569 shall be prepared according to this table if NRCS requests FSA-569. Step 1 – NRCS request FSA to prepare FSA-569 for farms for which non-compliance is discovered by NRCS.”

CORRECTIVE ACTION PLANNED

The Kansas NRCS State Office will issue a directive to review policy that NRCS should only request Form-569 from FSA after a non-compliance determination has been made. That directive will also clarify that a compliance determination must be completed and documented on each Form-569 requested from and/or received from the FSA county office. This corrective action will be completed in advance of the 2003 status review season, by January 1, 2003.

FINDING NO. 4 – DEFICIENCIES NOTED DURING TECHNICAL ASSISTANCE NOT SUBJECT TO FOLLOW-UP

NRCS Response

A potential HELC compliance deficiency observed while providing routine technical assistance is subject to a follow up status review if the deficiency is not corrected within one year of notification. The presence or absence of cost-share assistance has no bearing on HELC compliance determinations.

CORRECTIVE ACTION PLANNED

The Kansas NRCS State Office will require Area Office Assistant State Conservationist to evaluate the field office’s application of policy on HELC compliance deficiencies found while providing technical assistance. Based on evaluation findings, a determination will be made whether issuance of a clarifying directive to all field offices is appropriate. This corrective action will be completed in advance of the 2003 status review season, by January 1, 2003.

ABBREVIATIONS

AH	-	Special Problem Variance
DC	-	District Conservationist
FSA	-	Farm Service Agency
FOTG	-	Field Office Technical Guide
HEL	-	Highly Erodible Land
HELC	-	Highly Erodible Land Conservation
NFSAM	-	National Food Security Act Manual
NRCS	-	Natural Resources Conservation Service
USDA	-	United States Department of Agriculture

