



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

Natural Resources Conservation Service  
Compliance With Highly Erodible Land  
Provisions



**Audit Report No.  
10099-8-KC  
September 2002**



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250



DATE: September 10, 2002

REPLY TO

ATTN OF: 10099-8-KC

SUBJECT: Natural Resources Conservation Service – Compliance  
With Highly Erodible Land Provisions

TO: Bruce I. Knight  
Chief  
Natural Resources Conservation Service

ATTN: Dana York  
Director  
Operations Management and Oversight Division

This report presents the results of our review of the Natural Resources Conservation Service Compliance with Highly Erodible Land Provisions. Your August 23, 2002, response to the official draft report is included in its entirety as exhibit C with excerpts and the Office of Inspector General's position incorporated into relevant sections of the report.

Based on the information contained in the response, we were able to accept management decision for all recommendations included in the report. Final action on the recommendations that have reached management decision should be completed within 1 year to preclude being listed in the Secretary's management report. For final action, provide documentation to the Office of the Chief Financial Officer (OCFO) that the agreed upon actions have been completed as identified in the report.

We appreciate the courtesies and cooperation extended to our staff during this review.

/s/

RICHARD D. LONG  
Assistant Inspector General  
for Audit

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# EXECUTIVE SUMMARY

## NATURAL RESOURCES CONSERVATION SERVICE COMPLIANCE WITH HIGHLY ERODIBLE LAND PROVISIONS

AUDIT REPORT NO. 10099-8-KC

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### RESULTS IN BRIEF

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This report provides our audit survey results of the Natural Resources Conservation Service (NRCS) administration of the Highly Erodible Land Conservation (HELC) provisions. The review was performed in conjunction with an evaluation of a whistleblower complaint (Audit Report No. 10099-9-KC) to assess the adequacy of controls over the administration of the HELC provisions, including an assessment of applicable laws, regulations, and procedures, as well as the selection of tracts for status review and the reporting of status review results. A status review is a technical review for a tract of land that determines if a producer is applying an approved conservation plan or system. Status reviews provide information about implementation progress and problems to United States Department of Agriculture (USDA) agencies, conservation districts, and the public.

Interviews with agency personnel and reviews of conservation case files for 28 sample tracts disclosed that prescribed controls were not always functioning, as intended, to ensure proper administration of the HELC provisions. Weaknesses in handbook procedures reduced the effectiveness of NRCS administration of the HELC provisions. In addition, we noted that status reviews were not always timely performed during critical erosion control periods and that summaries of status review results did not always provide sufficient detail to accurately portray occurring levels of producer compliance with the HELC provisions. We also found that NRCS's application of the mediation process allowed the reversal of adverse compliance determinations that resulted from status reviews through the negotiations conducted in the mediation process. In addition, we identified three areas requiring NRCS and Farm Service Agency (FSA) coordination to ensure consistent procedures and practices for accomplishment of intended goals. Improvements in prescribed controls are needed to strengthen the agency's ability to provide accurate and reliable assessments of producer compliance with the HELC provisions.

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**KEY RECOMMENDATIONS**

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We recommend that NRCS review and revise, as necessary, unclear or conflicting procedures related to the administration of the HELC provisions, including those cited in this report. In addition, we recommend that NRCS formalize procedures for collecting, summarizing, and reporting status review results for future years based on expanded categories of status review determinations and that controls be implemented to ensure that lists of selected tracts for status reviews are forwarded to State and field offices in a timely manner. We further recommend that NRCS reevaluate when mediation is appropriate and, specifically, whether it is appropriate at the preliminary or final adverse technical determination phase of a compliance determination generated by a status review. We also recommend that NRCS coordinate with FSA to ensure consistency among agency policies and procedures.

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**NRCS RESPONSE**

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In their response to the official draft report, dated August 23, 2002, NRCS officials agreed with the findings and agreed to implement the five cited recommendations by August 1, 2003.

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**OIG POSITION**

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Based on the NRCS response, we were able to accept management decisions on all five recommendations. Specifics on each management decision and final action for each recommendation is addressed in the OIG Position sections of the report.

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# TABLE OF CONTENTS

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EXECUTIVE SUMMARY .....	i
RESULTS IN BRIEF .....	i
KEY RECOMMENDATIONS .....	ii
NRCS RESPONSE .....	ii
OIG POSITION .....	ii
TABLE OF CONTENTS .....	iii
INTRODUCTION .....	1
BACKGROUND .....	1
OBJECTIVES .....	2
SCOPE .....	2
METHODOLOGY .....	3
FINDINGS AND RECOMMENDATIONS .....	5
CHAPTER 1 .....	5
CONTROLS OVER HELC COMPLIANCE NEED ENHANCEMENT .....	5
FINDING NO. 1 .....	5
RECOMMENDATION NO. 1 .....	7
FINDING NO. 2 .....	8
RECOMMENDATION NO. 2 .....	9
FINDING NO. 3 .....	10
RECOMMENDATION NO. 3 .....	12
CHAPTER 2 .....	14
STATUS REVIEW PERFORMANCE AND ACCOMPLISHMENT REPORTING NEED IMPROVEMENT .....	14
FINDING NO. 4 .....	14
RECOMMENDATION NO. 4 .....	15
FINDING NO. 5 .....	16
RECOMMENDATION NO. 5 .....	17
EXHIBIT A – SITES VISITED .....	18

**EXHIBIT B – DETAILS OF NFSAM PROCEDURES REQUIRING REVIEW OR REVISION ..... 19**  
**EXHIBIT C – NRCS RESPONSE TO THE DRAFT REPORT ..... 24**  
**ABBREVIATIONS..... 26**

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# INTRODUCTION

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## BACKGROUND

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United States Department of Agriculture (USDA) highly erodible land conservation (HEL) provisions were set forth in The Food Security Act of 1985, Public Law 99-198.

Legislation that authorized changes to the Act, included Public Law 101-624, Food, Agriculture, Conservation, and Trade Act of 1990, and Public Law 104-127, Federal Agriculture Improvement and Reform Act of 1996.

The Food Security Act requires producers to meet specified requirements for highly erodible land (HEL) in order to remain eligible for certain 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 (CFR) Title 7, part 12, provides regulations applicable to the HELC 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. The National Food Security Act Manual (NFSAM) sets forth agency procedures for implementation and administration of the HELC provisions. NFSAM procedures require that a conservation management system should result in a substantial reduction in soil erosion, including 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 producers to maintain eligibility for USDA benefits in certain circumstances when they are not in compliance with their conservation plans or systems. 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 their conservation plans. Regulations authorize a similar exception, without the good faith requirement, for producers that NRCS identifies with possible violations while providing on-site technical assistance. The law also authorizes variances from the

HELCS provisions for failures that are minor<sup>1</sup> 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 and the Farm Service Agency (FSA) share responsibility for administration of the HELC provisions. FSA is responsible for processing Forms AD-1026, Referrals for HEL Determinations, for NRCS determinations of HEL. In addition, FSA is responsible for evaluating non-compliance situations to determine if producers acted in good faith. NRCS is responsible for classifying HEL and working with producers to establish conservation planning options that will protect soil quality and productivity and maintain producer eligibility for USDA program payments.

NRCS performs status reviews to test producers' compliance with the HELC provisions. A status review is a technical review for a tract of land that determines if a producer is applying an approved conservation plan or system. Status reviews provide information about implementation progress and problems to USDA agencies, conservation districts, and the public. The NRCS National office selects a random sample of tracts for status review. Additional tracts are selected for status 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. For calendar years (CY) 1995 through 1997, NRCS performed status reviews of approximately 45,000 to 50,000 tracts annually. Adoption of a statistical sampling methodology with acceptable reliability to project status review results over the universe of identified land tracts allowed NRCS to reduce the number of tracts subject to status review beginning with the 1998 CY. For CY's 1998 through 2000, NRCS performed status review of approximately 15,000 to 17,000 tracts per year.

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## **OBJECTIVES**

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The primary objective of the review was to evaluate the adequacy of controls over the administration of the HELC provisions including an assessment of applicable laws, regulations, and procedures, as well as the selection of tracts for status review and the reporting of status review results.

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## **SCOPE**

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The survey was performed at the NRCS National office, one NRCS and one FSA State office, two NRCS Area offices; three NRCS field offices, and two FSA county offices in Kansas (see exhibit A for a listing of sites visited). The State of Kansas

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<sup>1</sup> Having a minimal effect on the erosion control purposes of the conservation plan applicable to the land on which such violation has occurred.



was judgmentally selected for review on the basis of its program activity and receipt of a whistleblower complaint alleging improper administration of the HELC provision within one administrative area. Area and field office locations were judgmentally selected for review based on low numbers of non-compliance determinations and high numbers of 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 conditions. We noted that about 250 tracts were subject to status reviews within the field locations visited for the period covered by our review. During this same timeframe, over 10,000 status reviews were conducted within the State of Kansas.

The audit was conducted in accordance with Government Auditing Standards.

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## METHODOLOGY

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NRCS and FSA National office officials were advised of the planned review, including receipt of the whistleblower complaint. A preliminary discussion of issues identified during the review was held with NRCS National office representatives.

At the NRCS and FSA State offices, we interviewed agency personnel and reviewed records to obtain background information, identify agency policies and procedures applicable to the HELC provisions, identify any potential problem areas, and select 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 information and identify potential audit leads relative to the status review process. For selected sample tracts, we reviewed documentation on file, including Forms AD-1026, Referrals for HEL Determinations, 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 and producers were conducted as necessary to answer questions and provide clarification of transpired events.

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## FINDINGS AND RECOMMENDATIONS

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<b>CHAPTER 1</b>	<b>CONTROLS OVER HELC COMPLIANCE NEED ENHANCEMENT</b>
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Improvements in prescribed controls are needed to strengthen the agency's ability to provide accurate and reliable assessments of producer compliance with the conservation initiatives. Our assessment of NRCS administration of the HELC provisions disclosed that prescribed controls were not always functioning as intended. We identified several procedures within the NFSAM that were unclear or in conflict with other procedural references, including FSA handbook procedures. In addition, we questioned use of the mediation process in addressing non-compliance determinations with the HELC provisions resulting from a status review. As a result, NRCS' ability to provide accurate and reliable assessments of producer compliance with conservation requirements cannot always be assured.

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### FINDING NO. 1

#### NFSAM PROCEDURES NEED REVIEW AND REVISION

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In our interviews of agency officials and record reviews, we found that NFSAM procedures used by field personnel to monitor producer compliance with the HELC provisions did not always provide clear and complete guidance and were not always effective. Discussions with field personnel and review of selected

NFSAM procedures in conjunction with conservation case file reviews for 28 sample tracts, disclosed incorrect procedural cross-references, inconsistent guidelines for procedure application, and incomplete instructions for the execution of procedural requirements. Noted weaknesses in NFSAM procedures hamper the agency's ability to effectively administer the HELC provisions.

The Office of Management and Budget (OMB) Circular No. A-123, dated June 21, 1995, defines management controls as the policies and procedures used by agencies to reasonably ensure that programs achieve their intended results . . . and that laws and regulations are followed. Circular No. A-123 also states that management controls developed for agency programs should be logical, applicable, reasonably complete, and effective and efficient in accomplishing management objectives.

We reviewed the significant sections of the NFSAM procedures related to the administration of the HELC provisions. Our review disclosed a number of procedural references within the NFSAM that were incorrect, inconsistent, or incomplete. Details of these conditions are presented in exhibit B.

In addition, we questioned the application of a Kansas State office amendment that, as applied, resulted in broadening the granting of special problem (AH) variances. NRCS procedure 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. Specifically, Kansas provided that the Area office was to ascertain whether all NRCS policies and procedures were followed when reviewing a preliminary non-compliance determination. We found that the Area office determinations reviewed were not adequately documented, soil loss computations were not recomputed to ascertain their accuracy, and that the technical notes in one case showed that the Area office would search for a variance condition. Also, the State office policy was unclear as to how significant a deviation had to be from NRCS policy or procedure to allow an AH variance. In addition, details were not provided that specified how many years an AH variance could be used under this circumstance.

Kansas procedure<sup>2</sup> requires that prior to producer notice of adverse preliminary technical determination, the District Conservationist is responsible for requesting technical or policy assistance from the area conservationist. At the area 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, and (2) the administrative record documentation is complete. However, specific documentation requirements for these determinations are not spelled out in procedures.

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

We also found that little documentation was available at the Area office to

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<sup>2</sup> NRCS 180-GM, (Amend. KS9), KS410.18, dated December 1997.

show what was reviewed and concluded at that level. Therefore, we could not determine whether the Area office evaluated the conditions existing at the time the status review was performed by the District Conservationist. This lack 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.

For example, NRCS procedure requires that an in-office determination of HEL be completed within 15 days from receipt of the Form AD-1026 that indicates potential HEL. For one tract reviewed, we found that the initial preliminary non-compliance determination on sodbusted land made by the District Conservationist was overturned by the Area office, on the basis that the HEL compliance determination was not timely completed, while the HEL determination was not completed within 15 days. The determination was completed and notification was provided to the producer prior to planting of a crop. The producer received an AH variance for 2 consecutive years.

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**RECOMMENDATION NO. 1**

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Review the cited NFSAM procedures, make corrections or improvements, where warranted, and take appropriate action to ensure any other necessary revisions to the manual are identified and implemented. Eliminate known State office policies that are in conflict with the NFSAM when making necessary revisions.

**NRCS Response**

“The Natural Resources Conservation Service (NRCS) agrees to review and revise the National Food Security Act Manual (NFSAM). NRCS will set into place a procedure by which all State amendments are reviewed before release and posting to the NRCS Policy Web Site. NRCS also agrees to place the NFSAM on the NRCS Policy Web Site to provide better access to customers and employees. This action will be taken by August 1, 2003.”

**OIG Position**

We accept the management decision.

For final action, NRCS should provide documentation to the Office of the Chief Financial Officer (OCFO) that the NRCS has established and implemented a procedure to review and revise the NFSAM and review all State amendments before release and posting to the NRCS Policy Web

Site. NRCS will also need to provide documentation that the NFSAM has been placed on the NRCS Policy Web Site.

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**FINDING NO. 2**  
**MEDIATION ALLOWED**  
**NEGOTIATION OF COMPLIANCE**

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Compliance determinations, resulting from status reviews, are being negotiated in the mediation process. This occurred because NRCS procedures allowed producers, who opted for mediation, an opportunity to negotiate out of an NRCS preliminary technical determination of non-compliance

with the HELC provisions. As a result, producers who were subject to status reviews that resulted in adverse compliance determinations and elected mediation were afforded additional opportunities to maintain or extend their eligibilities for USDA program benefits.

NRCS procedure shows that mediation will be offered as an option in cases involving technical determinations or technical decisions. The District Conservationist makes a preliminary technical determination and gives the statutory or regulatory basis for the preliminary technical determination; provides a concise statement as to the reason for the preliminary technical determination based upon the cited statutes and/or regulations; and cites the issues or circumstances surrounding the preliminary technical determination. The program participant will be informed of his or her rights to mediation when the preliminary or final technical determination has been made. The determination will become final in 30 days, unless the producer requests a field visit for reconsideration of the preliminary determination and/or requests mediation of the preliminary technical determination. Procedure<sup>3</sup> also requires that any agreement reached during, or as a result of, the mediation process conform to the statutory, regulatory, and manual provisions governing the program.

NRCS performs status reviews to test producers' compliance with the HELC provisions. A status review is a technical review for a tract of land that determines if a producer is applying an approved conservation plan or system. Status reviews provide information about implementation progress and problems to USDA agencies, conservation districts, and the public. An adverse determination can result in the producer being ineligible for all USDA program payments.

We evaluated status review records at one Area office for two tracts of land on which the producers requested mediation with respect to adverse preliminary technical determinations relative to compliance with the HELC provisions. Documentation for one case showed the request for mediation

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<sup>3</sup> NRCS NFSAM, Part 521.31 c, dated November 1996.

was terminated upon acceptance of a revised conservation plan. Documentation for the second case showed the producer in possible violation of the HELC provisions from 1994 through 1996. During this timeframe, Area and field office personnel attempted to work with the producer to apply conservation measures necessary to address ephemeral gully erosion. A status review performed on March 7, 1996, resulted in an adverse preliminary technical determination and provided options available to the producer, including appeal and mediation.

On March 25, 1996, the producer requested mediation and on April 14, 1997, a mediation meeting was held with the producer, the producer's attorney, the Area office Assistant State Conservationist, the District Conservationist, the FSA County Executive Director, and the mediator present. The mediation summary of negotiations showed the producer agreed to seed approximately 20 acres, repair a waterway, and to improve minimum tillage farming methods to control erosion. NRCS agreed to work with the producer to develop a conservation plan based on a no-till operation with residue levels necessary to provide adequate erosion control. The mediation agreement resulted in rescinding the preliminary adverse technical determination; however, there was no documentation to show that the mediation process addressed the validity of the preliminary adverse compliance determination. In addition, the practice application appeared consistent with the conservation treatment options previously discussed with and rejected by the producer.

We question whether mediation should be offered as an option to resolve disputes between producers and agency personnel relative to adverse compliance determinations with the HELC provisions. A mediation agreement may be appropriate to address the actions needed to achieve future year compliance with the HELC provisions but may not rescind a current year non-compliance determination, which is based on the absence of an approved conservation system and corresponding soil loss calculations. A compliance determination should not be subject to negotiation with the producer and agency personnel should not have authority to reverse or circumvent a compliance determination in conjunction with the mediation process.

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**RECOMMENDATION NO. 2**

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Reevaluate when mediation is appropriate and, specifically, whether it is appropriate at the preliminary or final adverse technical determination phase of a compliance determination resulting from a status review. Also, revise NFSAM procedure, as needed, to clearly define agency personnel responsibilities and limitations during the mediation process to ensure that participants representing NRCS do not afford program participants additional remedies to inappropriately extend their non-compliance with the HELC provisions.

Establish clear guidelines that agency participants are not allowed to negotiate a compliance determination and that the mediation participants are not authorized to reverse or rescind adverse compliance determinations with the HELC provisions on the basis that a producer agrees to complete needed conservation treatments in the future.

**NRCS Response**

“NRCS agrees to provide national training on the USDA Administrative Appeals and Mediation process to ensure that program managers fully understand the procedures and principles. In addition, NRCS agrees to review and revise the NFSAM, parts 512, 518, 519, and 520, regarding eligibility for and granting of variances and exemptions. This action will be taken by August 1, 2003.”

**OIG Position**

We accept the management decision.

For final action, NRCS should provide documentation to the OCFO that the NRCS has provided national training on the USDA Administrative Appeals and Mediation process and has reviewed and revised the NFSAM, Parts 512, 518, 519, and 520, regarding eligibility for and granting of variances and exemptions.

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**FINDING NO. 3**

**COORDINATION NEEDED WITH  
FSA**

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Procedures developed by NRCS and FSA do not always provide for consistent administration of the HELC provisions. We identified agency procedures that were conflicting and unclear as to how agency personnel were to carry out assigned responsibilities associated with administration

of the HELC provisions. Weaknesses in procedures can result in the application of different compliance standards, thus impacting the Department’s ability to accurately evaluate producer compliance with the HELC provisions.

NRCS and FSA staffs often work together to offer landowners financial, technical, and educational assistance to implement conservation practices on privately owned land. Using this help, farmers and ranchers apply practices that reduce soil erosion, improve water quality, and enhance forestland, wetlands, grazing lands, and wildlife habitat. We identified three areas that require coordination between NRCS and FSA to ensure consistent procedures and practices for accomplishment of intended goals. Details follow:



## Processing of Form FSA-569, NRCS Report of HELC and Wetland Conservation Compliance for Spot-check Purposes

We identified conflicting instructions and practices for processing Form FSA-569. NFSAM procedure<sup>4</sup> requires NRCS to assign a control number when this form is received from FSA. FSA procedure provides conflicting guidance, as one reference<sup>5</sup> requires NRCS to assign a control number to all Forms FSA-569 and a second reference<sup>6</sup> only calls for NRCS to add a control number to the form when making an initial HELC non-compliance determination. Assignment of a document control number is critical to tracking the status of issued forms. Coordination of consistent policies and procedures within and between agencies is essential to effective management and oversight of producer compliance with the conservation provisions.

We also noted that NRCS did not always complete Form FSA-569, part c, indicating the compliance status of the land, before returning the form to FSA, as required. FSA procedure<sup>7</sup> requires county office personnel to inform the FSA State office of any Form FSA-569 for which NRCS does not make a preliminary technical determination within 60 calendar days after the form was referred. The FSA State office then attempts to resolve the problem with NRCS at the State level. FSA county office personnel did not always follow this procedure instead, treating the forms as if they were requested by NRCS in error. Kansas NRCS State office personnel stated that they did not want the District Conservationist requesting the form until the Area office had concurred on the preliminary non-compliance determination. As a result, if the Area office does not concur, then the form would not be requested.

## Determinations of Land Conversion from Native Vegetation

We noted that FSA procedure<sup>8</sup> requires FSA to determine whether land was converted from native vegetation, such as rangeland or woodland, to agricultural production after December 23, 1985. However, our review did not disclose any guidance on how county office personnel were to make this determination. We identified one county office that relied on producer information to make these determinations. A second county office used cropland classification to make such determinations, assuming that land classified as non-cropland would have native vegetative cover, which was not always a valid assumption. A consistent and accurate methodology for establishing a conversion of native vegetation to agricultural production

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<sup>4</sup> NRCS NFSAM procedure Part 522.61 b, dated November 1996.

<sup>5</sup> FSA Handbook 6-CP, Rev. 2, Amend. 1, 602 B, dated September 24, 1996.

<sup>6</sup> FSA Handbook 6-CP, Rev. 2, Amend. 1, 801 C, dated September 24, 1996.

<sup>7</sup> FSA Handbook 6-CP, Rev. 2, Amend. 1, 604 B, dated September 24, 1996.

<sup>8</sup> FSA Handbook 6-CP, Rev. 2, Amend. 1, 17 B, dated September 24, 1996.

is needed to ensure equitable treatment of producers in light of the special provisions that apply to sod busted land. Such determinations should be based on the best available information as identified through consultation with NRCS personnel.

### Status Review Requirements for Farm Loan Program (FLP) Borrowers

The NRCS procedure<sup>9</sup> states that FSA FLP rules require a status review for 5 percent of borrowers who are producing commodity crops on HEL. However, we did not identify any procedures in the NFSAM that explained how to select a sample of borrowers for status review. Our review of FSA handbooks<sup>10</sup> did not disclose guidance for selecting FLP borrowers for status review. We noted that two county offices used different methods to select sample FLP borrowers for status review, neither of which provided for the best use of resources or results.

Particular questions are not addressed that relate to the inclusion of producers whose loans are not impacted by the HELC provisions and the timing of required status reviews for FLP borrowers. Regulations<sup>11</sup> provide that determinations of ineligibility do not apply to loans made prior to December 23, 1985. Thus, it would not seem a beneficial use of resources to perform status reviews for tracts of land with farm loans closed prior to December 23, 1985. In addition, FLP personnel stated that FLP borrowers are not subject to mandatory status review at the time a loan is requested, yet once a loan is closed, it is unlikely the loan will be called due to an HELC violation.

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## **RECOMMENDATION NO. 3**

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Coordinate with FSA to clarify the cited procedures that are inconsistent or do not describe how agency personnel are to perform their assigned responsibilities.

### **NRCS Response**

“NRCS agrees to coordinate with the FSA to clarify the cited procedures. This action will be taken by August 1, 2003.”

### **OIG Position**

We accept the management decision.

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<sup>9</sup> NFSAM Part 518.12 B, dated November 1996.

<sup>10</sup> FSA Handbooks 1-FLP and 2-FLP.

<sup>11</sup> 7 CFR, Section 12.4 (f).

For final action, NRCS should provide documentation to the OCFO that the NRCS has coordinated with the FSA and clarified NRCS procedures.

<b>CHAPTER 2</b>	<b>STATUS REVIEW PERFORMANCE AND ACCOMPLISHMENT REPORTING NEED IMPROVEMENT</b>
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We found that the National office summary reports and data distribution of reviews to determine producer compliance with HELC were not in sufficient detail to show agency and producer efforts to achieve conservation objectives on HELC. Also, our review disclosed the reliability of status review results of producer compliance was reduced because they were performed outside critical erosion control periods. As a result, these weaknesses influenced the accuracy and reliability of agency assessments and reports on producer compliance with HELC provisions.

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**FINDING NO. 4**

**PRODUCER COMPLIANCE NOT ACCURATELY REFLECTED IN STATUS REVIEW RESULTS**

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For two years (1998 and 1999), National office summaries of status review results did not accurately reflect the details of producer efforts relative to compliance with the HELC provisions because the National office was changing its reporting system. Summary reports for 1998 and 1999 included only a yes or no response relative to producer

compliance with the HELC provisions, whereas, summary reports for 1995 through 1997 included assessments of producer efforts based on 10 established categories of status review determinations. Limiting the assessment of producer compliance to a yes or no response results in an oversimplification of agency and producer efforts to achieve conservation on HEL.

The OMB Circular No. A-123, dated June 21, 1995, provides guidance on establishing management controls. Circular A-123 sets forth that management controls are the organization, policies, and procedures used to reasonably ensure that (i) programs achieve their intended results, (ii) resources are used consistent with agency mission, (iii) programs and resources are protected from waste, fraud, and mismanagement, (iv) laws and regulations are followed, and (v) reliable and timely information is obtained, maintained, reported and used for decision making. NFSAM procedure<sup>12</sup> requires the Operations Management and Oversight Division to accumulate, coordinate, analyze, summarize, and prepare reports on status review data in association with the Conservation Operations Division.

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<sup>12</sup> NRCS NFSAM, Part 518.27, dated August 1998.

In accordance with the Food Security Act of 1985, producers had until January 1, 1995, to implement a system of conservation practices resulting in a substantial reduction of erosion on HEL. Beginning with the 1995 CY, NRCS performed status reviews and collected data on a nationwide basis to analyze and report on the levels of producer compliance with the HELC provisions. We examined the status review data compiled by the State of Kansas, as well as State summary data compiled by the NRCS National office for the 1995 through 1999 CY's. Our review disclosed that data collected for the 1995 through 1997 CY's reflected 10 categories of status review determinations, whereas the data collected for the 1998 and 1999 CY's only reflected a yes or no response relative to producer compliance with the HELC provisions. On January 13, 1999, the NRCS National office submitted a request for waiver in preparing an annual summary report of the 1998 status review results. OIG concurred with the requested 1-year waiver based on NRCS implementation of a new Performance and Results Measurement System (PRMS), and the stated plan that the 1999 status review results would be entered into the PRMS and summarized on a national basis. National officials subsequently provided State summary data for the 2000 CY that evidenced a return to the collection and summarization of compliance data based on the detailed categories of status review determinations.

The status review process serves as the NRCS control and provides assurance whether producers are in compliance with conservation provisions and eligible for program payments. The conduct of status reviews and the collection and summarization of status review results is critical to reporting program accomplishments and assessing program integrity. As such, data collected and summarized by the National office should continue to reflect the various categories of status review determinations, as this information is necessary to develop comprehensive reports that can provide relevant and useful information for users internal and external to the agency. In addition, the agency must establish and maintain a consistent methodology for collecting and summarizing status review data to provide for reliable comparisons of data in assessing producer compliance with the HELC provisions.

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**RECOMMENDATION NO. 4**

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Formalize a procedure within the appropriate handbook to ensure the continued collection, summarization, and reporting of status review results for future years based on expanded

descriptive categories that provide an accurate representation of status review determinations necessary to properly evaluate implementation of the HELC provisions.

**NRCS Response**

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“NRCS agrees, as part of re-engineering the spot-check status review process, to formalize the procedure within the appropriate manual, and maintain the current, expanded, and descriptive categories. A project plan is already being prepared, and this action will be taken by August 1, 2003.”

### **OIG Position**

We accept the management decision.

For final action, NRCS should provide documentation to the OCFO that the NRCS has, as part of re-engineering the spot-check status review process, formalized the procedure within the appropriate manual, and is maintaining the current, expanded, and descriptive categories.

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**FINDING NO. 5**  
**STATUS REVIEW LISTS NOT**  
**TIMELY PROVIDED TO FIELD**  
**OFFICES**

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Status reviews were not always timely performed during critical erosion control periods due to the untimely distribution of status review tract selection lists to State and field level personnel. Performance of status reviews outside the critical erosion control periods can increase workload and reduce the reliability of status review results.

Procedure<sup>13</sup> requires that field office personnel provide advance notice to producers of impending status reviews. Advance notice is to be provided within a 15 to 30 day timeframe prior to the scheduled review. Untimely distribution of status review lists prohibits field office personnel from scheduling and performing required status reviews within critical erosion control periods.

For example, the Kansas State Quality Assurance Plan for 2000 required status reviews for wind erosion to be completed from March 1 through April 15 (critical erosion control period for wind erosion). Records at one field office in Kansas provided evidence that the list of randomly selected tracts for status review in 2000 was not received until April 19, 2000. Kansas Bulletin No. KS330-0-13, that provided the field offices with information on how to download and use the 2000 status review list, was not issued until April 27, 2000. Untimely distribution of status review lists to State and field office personnel prohibited the agency from fulfilling the requirements of the State Quality Assurance Plan.

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<sup>13</sup> NRCS NFSAM, Part 518.21 a, dated November 1996.

A review of Kansas State office records evidenced the following dates for the forwarding of status review lists to State and field offices for the period 1996 through 2000:

Year	Date Status Review List Sent To Field Offices	Date Status Review List Sent To State Offices
1996	March 12, 1996	February 21, 1996
1997	April 2, 1997	February 19, 1997
1998	March 4, 1998	February 5, 1998
1999	March 9, 1999	February 1, 1999
2000	April 13, 2000	April 5, 2000

The table shows untimely distribution of status review lists to field office personnel in 2 of the last 5 years (1997 and 2000). National office officials acknowledged responsibility for the untimely production and distribution of status review lists for 2000. The Kansas State office was responsible for untimely distribution of the status review lists for 1997. The NRCS National office needs to establish control features to ensure that status review lists are timely distributed to State offices and, in turn, to field offices.

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## **RECOMMENDATION NO. 5**

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Develop an action plan to ensure that field offices receive status review lists with sufficient lead-time to schedule and complete status reviews within critical erosion control

periods.

### **NRCS Response**

“NRCS agrees, as part of re-engineering the spot-check status review process, to develop a mechanism of timely distribution of the status review lists. A project plan is already being prepared. This action will require funding for software development. This request is being formalized for submission for fiscal year 2003 funding. This action will be taken by August 1, 2003.”

### **OIG Position**

We accept the management decision.

For final action, NRCS should provide documentation to the OCFO that the NRCS has, as part of re-engineering the spot-check status review process, developed a mechanism of timely distribution of the status review lists to field offices with sufficient lead-time to allow scheduling and completion of status reviews within critical erosion control periods.

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## 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)



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## **EXHIBIT B – DETAILS OF NFSAM PROCEDURES REQUIRING REVIEW OR REVISION**

Finding No. 1 addresses the need for clear, consistent, and complete guidance to ensure proper implementation and monitoring of the HELC provisions. Details of noted agency procedures requiring review and/or revision follow:

- NFSAM procedure, part 511 c, provides guidance on completion timeframes for HEL determinations. The procedure allows 15 calendar days for completing determinations in the NRCS office and 60 calendar days for completing determinations on-site. Part 511.1 acknowledges these timeframes may not always be attainable; however, we did not identify any procedure that prescribes NRCS action if HEL determinations are not made within these timeframes. We also noted that procedure did not clearly state whether to start counting the elapsed days from the time the producer completed the Form AD-1026 or from the time NRCS received the Form AD-1026 and associated documentation. We identified one instance where the Form AD-1026 was completed in another county and was not received by the NRCS field office until 21 days later.
- NFSAM procedure, part 512.10, dated August 1998, showed that conservation systems must result in a substantial reduction in soil erosion compared to the level of soil erosion existing before the application of conservation measures or systems. Part 512.10 c provides a table that defines a substantial reduction of erosion four different ways, depending on the land's history of crop production and when a conservation plan was obtained and/or a conservation system was applied to the land. The table provides potentially conflicting guidance.

The first definition for substantial reduction in erosion applies when land was used to produce crops prior to December 23, 1985, and the land has an approved, applied, and maintained conservation plan or system. The second definition applies when a conservation system or plan was approved after July 3, 1996, for land used to produce crops prior to December 23, 1985. These two conditions are not mutually exclusive. The description of when to apply the first definition is not restricted to a specific timeframe. Therefore, if a conservation plan or system was approved after July 3, 1996, (second definition) but is applied and maintained, the first definition of substantial reduction in erosion could apply.

We also noted the first description of substantial reduction in erosion implies a conservation system could be revised if the new conservation system resulted in an equal or greater reduction in erosion. Also, situations could occur where this would be in conflict with the second definition for substantial reduction in erosion. See the following table for a reproduction of the applicable parts of the table.

IF the field...	THEN a substantial reduction...
was used to produce crops prior to December 23, 1985, and has an approved, applied, and maintained conservation plan or system.	has already been met, providing the conservation plan or system is applied and maintained or the revised system has an equal or greater reduction in erosion.
was used to produce crops prior to December 23, 1985, and has a conservation system or plan that has been approved after July 3, 1996.	is a 75% reduction of the potential erodibility, not to exceed 2 times the soil loss tolerance level for the predominantly highly erodible map unit in the HEL field.

- NFSAM procedure was inconsistent with regulations relative to the writing of conservation plans. The NFSAM, part 512.11 c, dated November 1996, instructed NRCS, at the request of the person, to document in the form of a conservation plan, conservation systems not included in Section III of the FOTG that were applied for HELC purposes. However, 7 CFR part 12, section 12.23 provides that a conservation plan or a conservation system developed for the purposes of Section 12.5 (a) must, be based on and to the extent practicable, conform with the NRCS FOTG in use at the time the plan is developed or revised. NRCS may allow a person to include in the conservation plan or within a conservation system under the plan, on a field-trial basis, practices that were not currently approved but that NRCS considers to have a reasonable likelihood of success. These trials must have prior approval by NRCS and must be documented in the conservation plan specifying the limited time period during which the field trial was in effect.
- NFSAM procedure, part 518.10 d, dated November 1996, provides guidance for recording 1 of 4 different alternatives for recognizing how a tract was selected for status review. The choices are: (1) "R" for a tract selected by NRCS on a random basis, (2) "U" for a tract selected because it was owned or operated by a USDA employee, (3) "S" for a tract added due to prior year variance, and (4) "A" for a tract added due to reinstatement, referred by another agency, whistleblower allegations, potential violation observed by NRCS, or other additions. However, the 2000 field office Computer System software only authorizes the use of two options ("U" for USDA employee and "A" for others) for tract selection categories.
- NFSAM procedure, part 518.12 d, dated November 1996, provides guidance for adding tracts to the status review list. This part references part 518.27 b or 522.61 b for assignment of control numbers for FSA or other USDA referred tracts. We found part 518.27 b did not exist in the current manual.
- NRCS procedure, part 518.12 h, dated August 1998, provides conditions for exemption from status review field visits. One of the exemptions from field visit is authorized if the person selects a Basic Conservation System or Resource Management System on HEL cropland on the tract and is using and applying the system. We noted the procedure does not provide guidance on how field personnel are to determine whether the person is using and applying the system. NRCS could determine a person using one of these systems years ago but this determination does not indicate whether the person is

properly using the system today. For example, a Basic Conservation System can require terraces and waterways. NRCS can determine if new terraces and waterways are sufficient to control erosion but this determination does not indicate the state of maintenance or needed repair in the future. In 2 of 3 counties visited, we noted status reviews that disclosed tracts with deficient structural practices; each of the tracts was planned to a Basic Conservation System. If the field office exempted these tracts from field visit, the deficiencies in conservation practices may have been overlooked.

- NFSAM procedure, part 518, provides guidance for status reviews; however, the instructions do not specifically require a status review for all identified cases of sod-busted land. Required status reviews are a needed control as producers who plant agricultural commodities on sod-busted land could have problems maintaining compliance with the HELC provisions.
- NFSAM procedure, part 518.21 g, did not provide complete guidance for using the wind erosion equation during a status review. This part states that when using the wind erosion equation for evaluating conservation system planning and application, the following shall be adhered to: (1) if the system is planned using the critical period method, the system application shall be evaluated using the critical period method, and (2) if the system is planned using the management period method, then, the system application shall be evaluated using the management period method. The procedure addresses the issue if a person has a plan showing a conservation system. However, NFSAM procedure, part 512.13 a, dated November 1996, does not require a producer to have a documented conservation plan, only to use an approved conservation system. Also, instructions were not available to determine the correct computation method for computing soil loss using Wind Erosion Equation (WEQ) when the producer did not have a documented conservation plan.
- NFSAM procedure, part 518.25 a, dated November 1996, provides for 12 different categories for coding status review results, whereas part 526.32, dated November 1996, provides an example of the NRCS-CPA-18, the reverse side of which includes only 10 codes for status review determinations. The NRCS-CPA-18 did not include codes AE (exemption based on economic hardship), AG (exemption based on good faith), and TA (technical assistance variance) specified in Part 518.25 a, of the procedure. Also, code NC (status review not conducted) was included on the NRCS-CPA-18, but not specified in procedure.
- NFSAM procedure, part 520.14 c, dated November 1996, allows properly trained personnel to make visual estimates of crop residue during the status review process. However, instructions were not available in the NFSAM that specified the training necessary for making visual residue estimates. Also, procedure did not specify who determined whether a person was qualified to make visual residue estimates applicable to status reviews.
- NFSAM procedure was inconsistent with regulations for authorizing one-year exemptions for deficiencies noted while providing technical assistance. NFSAM

procedure, part 520.21 c, dated August 1998, authorized up to 1 year, under certain conditions, for producers to take action necessary to correct compliance deficiencies. Procedure did not make an exception for any particular land category. Regulations limited this exemption to land converted to crop production prior to December 23, 1985. Our review of 7 CFR, part 12, section 12.5 (a) (5) (ii) showed, if NRCS observed a possible compliance deficiency while providing on-site technical assistance, a person was allowed up to 1 year to implement the measures and practices necessary to be considered applying the person's conservation plan. Our review also showed this provision only applied if the person met the requirements of section 12.5 (a) (5) (i), which showed the applicable land had to be converted from native vegetation to crop production before December 23, 1985. The regulations, section 12.5 (a) (5) (iii), only authorized relief for persons who broke land out of native vegetation after December 23, 1985, (sod-busted) if it was determined that the person acted in good faith and without intent to violate the provisions of this part. Even if the person acted in good faith, a payment reduction applied to this land category.

- NFSAM procedure, part 521.31 b, dated November 1996, refers the reader to part 521.42 for a sample letter used when notifying producers of a preliminary technical determination. However, part 521.42, dated November 1996, did not provide a sample letter but, instead, provided a list of names and addresses for State mediation program contacts.
- The NFSAM did not provide specific guidance on the action required, if a producer was not in agreement with practices deemed acceptable by field office personnel, when developing conservation plans. Instructions need to include guidance relative to this issue, as our review of 28 tracts in Kansas disclosed 3 instances where producers and NRCS field personnel had not reached a consensus regarding conservation planning options. In each case, the producer was subject to a preliminary adverse compliance determination that was subsequently rescinded, based on approval of an AH variance due to NRCS error involving untimely completion of the HEL determination or failure to offer all conservation planning options.

NFSAM procedure, part 518.25 a, provides that an AH variance is authorized when the 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 special problems or situations, including NRCS error, that prevent the producer from applying the practice. NFSAM procedure, part 520.28, also authorizes an AH variance for a specifically identified problem, unique to the producer based on NRCS error, that prevented the person from applying the practice; however, this reference does not include the qualifying criteria that the producer must be following an approved conservation plan or applying an approved conservation system. As noted in regard to sample cases in Kansas, AH variances were approved for situations where producers were not following approved plans or applying approved systems. In addition, we questioned whether the timing of agency errors actually prevented producers from applying necessary conservation measures. As such, guidance is

needed to address the extent to which producers and agency field personnel are responsible for assuring that conservation plans are developed or conservation systems agreed upon. Such guidance should also address the extent (number of crop years) to which agency errors can be used to support the approval of AH variances.

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## EXHIBIT C – NRCS RESPONSE TO THE DRAFT REPORT

United States Department of Agriculture



Natural Resources Conservation Service  
P.O. Box 2890  
Washington, D.C. 20013

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SUBJECT: Office of Inspector General (OIG) 10099-8-KC—Compliance  
with Highly Erodible Land Provisions

TO: Richard D. Long  
Assistant Inspector General for Audit  
Office of Inspector General

AUG 23 2002

The following is in response to the official draft of the OIG 10099-8-KC Compliance with Highly Erodible Land Provisions Audit.

### **Recommendation 1:**

The Natural Resources Conservation Service (NRCS) agrees to review and revise the National Food Security Act Manual (NFSAM). NRCS will set into place a procedure by which all State amendments are reviewed before release and posting to the NRCS Policy Web Site. NRCS also agrees to place the NFSAM on the NRCS Policy Web Site to provide better access to customers and employees. This action will be taken by August 1, 2003.

### **Recommendation 2:**

NRCS agrees to provide national training on the USDA Administrative Appeals and Mediation process to ensure that program managers fully understand the procedures and principles. In addition, NRCS agrees to review and revise the NFSAM, Parts 512, 518, 519, and 520, regarding eligibility for and the granting of variances and exemptions. This action will be taken by August 1, 2003.

### **Recommendation 3:**

NRCS agrees to coordinate with the Farm Service Agency to clarify the cited procedures. This action will be taken by August 1, 2003.

### **Recommendation 4:**

NRCS agrees, as part of re-engineering the-spot check status review process, to formalize the procedure within the appropriate manual, and maintain the current, expanded, and descriptive categories. A project plan is already being prepared, and this action will be taken by August 1, 2003.

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

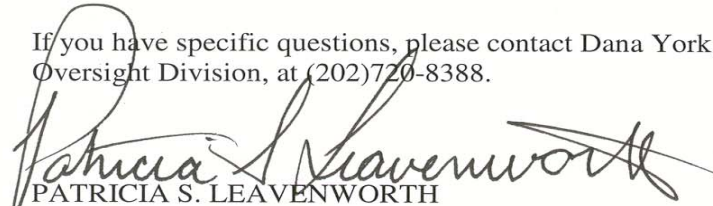
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Richard D. Long  
Page 2

**Recommendation 5:**

NRCS agrees, as part of re-engineering the spot-check status review process, to develop a mechanism for timely distribution of the status review lists. A project plan is already being prepared. This item will require funding for software development. This request is being formalized for submission for fiscal year 2003 funding. The action will be taken by August 1, 2003.

If you have specific questions, please contact Dana York, Director, Operations Management and Oversight Division, at (202)720-8388.



PATRICIA S. LEAVENWORTH  
Acting Deputy Chief for Programs

cc:

Katherine C. Gugulis, Deputy Chief for Strategic Planning and Accountability, NRCS,  
Washington, D.C.

Mark W. Berkland, Director, Conservation Operations Division, NRCS, Washington, D.C.

Dana D. York, Director, Operations Management and Oversight Division, NRCS,  
Washington, D.C.

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## ABBREVIATIONS

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AH		Special Problem
CFR		Code of Federal Regulations
CY		Calendar Year
FLP	-	Farm Loan Program
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
OCFO		Office of the Chief Financial Officer
OMB	-	Office of Management and Budget
PRMS	-	Performance and Results Measurement System
USDA	-	United States Department of Agriculture