

527.7 Memorandum of Understanding between ASCS and SCS

Memorandum of Understanding
Between
Agricultural Stabilization and Conservation Service (ASCS)
And
Soil Conservation Service (SCS)

Relative to implementation of the conservation provisions of the Food Security Act of 1985.

Authorities: Soil conservation and Domestic Allotment Act, 16 USC 590 (h); Food Security Act (FSA) of 1985, 16 USC 3811 et seq.

Purpose: Implementation of the highly erodible land and wetland conservation provisions of FSA requires close coordination of efforts and sharing of information regarding producer participation in certain USDA programs between ASCS and SCS. Additionally, both agencies have a role in checking the producer's annual certification of compliance with the conservation provisions of FSA. This memorandum sets forth the specific areas of coordination and data sharing required by both agencies to carry out their responsibilities under FSA and 7 CFR Part 12.

ASCS RESPONSIBILITIES

ASCS will:

1. Maintain official USDA records relative to the farms, tracts, fields, and cropping history of the producers who participate in certain USDA programs. The records will:
 - a. Record by farm, tract, and field number highly erodible land and wetland determinations.
 - b. Record by farm and tract number:
 1. Approved conservation plans.
 2. Actively applied conservation plans.
 - c. Include site-specific information on the location of highly erodible land, wetland, farmed wetlands, artificial wetlands, commenced exemption determinations, third party converted wetlands, prior converted cropland, and areas of non-wetland and non-highly erodible land.
2. Utilize SCS information to delineate wetland areas on ASCS aerial photography.
3. Utilize SCS determinations of "actively applying the conservation plan" and "applying a conservation system" to determine eligibility for program benefits.
4. Advise a new farm owners an/or operators whether a conservation plan has been developed for the land and of previous HEL and wetland determinations recorded by field on ASCS photography. In the absence of such plans or determinations and /or development of an approved conservation plan.

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5. Maintain an automated listing of the following SCS determinations:
 - a. That an approved conservation plan has been developed for the tract of land; and
 - b. That the conservation systems described in the conservation plan are being actively applied.
6. Provide data at the field office level to SCS on reconstitution and new programs participants in order to update records on highly erodible land and wetland determinations and approved conservation plans and/or systems. This electronic data-sharing is to begin in calendar year 1990.
7. Be on alert for potential violations of the swampbuster and sodbuster provisions during the course of conducting normal business activities including random spot checks of sodbuster and swampbuster compliance checks.
8. Issue an ASCS-569 to SCS for potential sodbuster cases.
9. Request that SCS make wetland determinations where ASCS has reason to believe that a producer is out of compliance.
10. Make commenced conversion exemptions and third-party conversion exemption determinations.
11. Utilize SCS determinations concerning the extent to which supplies and materials purchased prior to December 23, 1985, would have drained a wetland when making commenced conversion exemption and third-party conversion exemption determinations.
12. Refer to SCS all issues concerning acceptable maintenance of drainage systems.
13. Refer to SCS all questions concerning abandonment of prior converted cropland.
14. Accept certifications from producers for whom SCS has notified ASCS that the producers has conservation plan, and based on that certification assume that producers are actively applying the conservation plan until SCS informs ASCS otherwise.

SCS RESPONSIBILITIES

SCS will:

1. Make appropriate HEL and wetland determinations on Form SCS-CPA-026 for all Forms AD-1026 referred to SCS by ASCS.
2. Provide ASCS clearly outlined delineations of all wetland determinations on the photocopy and designate HEL fields on the photocopy.

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3. Provide ASCS with a list of tracts with highly erodible land and approved FSA conservation plans by farm and tract as of January 1, 1990. The list will identify those tracts eligible for a time extension due to lack of a soil survey.
4. Determine whether an approved conservation plan has been developed for the land.
5. Complete a status review on a representative sample of approved conservation plans each calendar year to determine whether the producer is actively applying the approved conservation plan.
6. Inform producers of the result of the status review and of appeal rights on SCS determinations.
7. Report the following to ASCS:
 - a. changes in HEL and wetland determinations.
 - b. That the conservation plan is approved.
 - c. that the producer is not actively applying the conservation plan. This information will also be reported to FmHA and FCIC.
8. Make an appropriate determination and report to both the producer and ASCS on all farms or tracts referred by ASCS on Form ASCS-569.
9. Notify ASCS, using Form ASCS-569, of the final determination that a producer is not using a conservation system or not actively applying the conservation plan after the 45-day appeal time has passed, or after the person has made an appeal.
10. Enter on form ASCS-569 the date that the producer was notified that he or she was not using a conservation system or not actively applying the conservation plan.
11. Determine whether planned activities on drainage systems are considered maintenance or improvement of the current drainage system.
12. Upon request ASCS, make wetland determinations and determine the extent to which supplies and materials purchased prior to December 23, 1985, would have drained wetlands.
13. Provide information to ASCS on cases where SCS is informed of potential violations and make any necessary determinations.
14. Make determinations of abandonment of prior converted cropland.

AGREED:

Chief, SCS

Administrator, ASCS

Date

Date

527.7 Memorandum of Understanding between ASCS and SCS, (Additional Material)

Subject: Conservation Compliance Implementation

TO: ASCS Offices
SCS Offices

The Agricultural Stabilization and Conservation Service (ASCS) and the Soil Conservation Service (SCS) signed a Memorandum of Understanding (MOU) on January 9, 1990. The MOU defines a number of the responsibilities of the two agencies in implementing the conservation provisions of the Food Security Act of 1985.

This letter reaffirms our commitment to the terms of the MOU. We do reiterate that it is the sole responsibility of SCS to determine whether producers are actively applying their conservation plans.

SCS will be conducting random checks of producers in each county to determine whether producers are actively applying their plans. SCS will also handle complaints from the public, ASCS, or other agencies regarding this determination. In the event SCS determines a person not to be actively applying the plan, SCS will notify the producer of this decision and handle the appeals associated with such determinations. SCS will then report to ASCS producers not actively applying plans. ASCS will determine U.S. Department of Agriculture benefit ineligibility for the crop year involved.

SCS will also provide information to ASCS relative to cases under consideration for the graduated sanction provision of the law. ASCS will use this information to make the final determination of "good faith" and the amount of graduated sanction that is applicable.

Administrator
Agricultural Stabilization and
Conservation Service

Chief
Soil Conservation Service

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527.7 Memorandum of Understanding between ASCS and SCS, (Additional Material)

NATIONAL BULLETIN NO. 180-1-16

SUBJECT: CPA - UPDATE OF MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN ASCS AND SCS RELATIVE TO CONSERVATION
COMPLIANCE IMPLEMENTATION

Purpose. To distribute copies of the above MOU to SCS offices.

Expiration Date. September 30, 1991.

Background. The original MOU between ASCS and SCS relative to implementation of the conservation provisions of the 1985 Food Security Act (FSA) was signed by both agencies in January of 1990. The attached update to the original MOU is a reaffirmation of the commitment of both agencies to FSA implementation.

Both the original MOU and the update will be made part of the appendix of the National Food Security Act Manual in a later issuance of the Manual.

Director
Conservation Planning Division

Attachment

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