

February 5, 2019

Mr. Jason Outlaw  
National Leader for Wetland and Highly Erodible Land Conservation  
USDA-Natural Resources Conservation Service  
1400 Independence Avenue, SW  
Washington, DC 20250

Dear Mr. Outlaw:

Thank you for the opportunity to provide comments on Highly Erodible Land and Wetland Conservation Regulation (Docket Number: NRCS-2018-0010). These comments are submitted on behalf of the National Association of Wheat Growers and the American Soybean Association. The National Association of Wheat Growers (NAWG) is a federation of 21 state wheat grower associations that works to represent the needs and interests of wheat producers before Congress and federal agencies. Based in Washington, D.C., NAWG is grower-governed and grower-funded, and works in areas as diverse as federal farm policy, trade, environmental regulation, agricultural research and sustainability.

The American Soybean Association (ASA) represents all U.S. soybean farmers on domestic and international policy issues important to the soybean industry. ASA has 26 affiliated state associations representing 30 soybean producing states and more than 300,000 soybean farmers.

In addition to the comments submitted in this letter, we support the comments submitted by the North Dakota wheat and soybean associations. Specifically, the letter signed by North Dakota Grains Growers Association, North Dakota Soybean Growers Association, North Dakota Corn Growers Association, and Ellingson Companies.

The grower members of our organization(s) want to ensure that actions taken by the Natural Resources Conservation Service (NRCS) staff members relating to wetland and highly erodible land conservation compliance are done in a transparent, consistent manner that is understandable to growers. For years, growers in the prairie pothole region have faced inconsistent interpretations and application of wetland conservation requirements, leaving them to face significant personal time and cost to defend their actions based on older NRCS issued wetlands documents. This uncertainty does not allow growers to manage their operations in a consistent manner, wastes time and resources of NRCS and growers, and does not result in clear resource conservation management and benefits.

We are pleased that NRCS is taking action to address the older wetland determinations that were conducted between 1990 and 1996 when the 1996 Farm Bill altered the wetland conservation provisions and created the "certified" wetland determination terminology. Growers that acted in good faith to obtain a wetland determination, and that retain documentation of the determination should not be required to undergo another wetland determination. We appreciate

that the NRCS action in this rule recognizes those determinations made between 1990 and 1996 as sufficient to meet wetland conservation compliance requirements.

The clarification of wetland determinations conducted at the field or sub-field level is also appreciated. Inconsistent treatment of farmers across states and counties needs to be addressed; and we are hopeful that this change will clarify for NRCS staff and individual growers the options available for field and subfield determinations instead of full tract level review.

The use of precipitation data is important in considering the normal conditions on the land and while the use of 30-year average precipitation data is not ideal, we accept this approach as a compromise position. Creating a timeframe with 1985 in the middle, recognizes the critical date of the enactment of the 1985 Food Security Act, and the creation of the wetland conservation compliance requirements.

Another important clarification provided by this rule is the addition of the definition of “best drained condition.” This new reference is necessary to ensure recognition of land that was drained prior to the enactment of the Food Security Act on December 23, 1985. Providing a clear definition for NRCS staff, growers and others allows for consistent application of the conservation compliance exemptions and requirements. Actions taken prior to December 23, 1985 are provided statutory exemption from wetland conservation compliance requirements and the addition of this definition provides clarity to the regulation.

In addition, we ask for NRCS to take action on minimal effect exemptions. For years, NRCS has failed to establish a list of practices that would qualify under the minimal effect exemptions. Current law, 16 USC Section 3822(d) “For purposes of applying the minimal effect exemption under subsection (f)(1), the Secretary, shall identify by regulation categorical minimal effect exemptions on a regional basis to assist persons in avoiding a violation of the ineligibility provisions of section 3821 of this title. The Secretary shall ensure that employees of the Department of Agriculture who administer this subchapter receive appropriate training to properly apply the minimal effect exemptions determined by the Secretary.” The Department and NRCS have failed to act on this portion of existing statute for years and has again failed to sufficiently address the minimal effects exemptions in this interim final rule.

The implications of the conservation compliance provisions of the 1985 Food Security Act changed with the enactment of the 2014 Farm Bill and the link to crop insurance premium subsidies. NRCS staff traditionally have leeway in adapting conservation programs to fit the needs of their state, but in this case NRCS must apply the conservation compliance requirements consistently. The role of NRCS in making determinations can have a significant impact on farmers in the prairie pothole region and across the US. The methods, processes and standards that NRCS uses to make the wetland and highly erodible land compliance determinations must be transparent and consistently applied across counties and states. The failure to do so can place farmers at a competitive disadvantage and does not provide the consistency farmers need to operate their farms to be in compliance with the USDA requirements and ensure proper environmental protections.

On behalf of the National Association of Wheat Growers and the American Soybean Association, thank you for the opportunity to comment.

Sincerely,



Jimmie Musick  
President  
National Association of Wheat Growers



Davie Stephens  
President  
American Soybean Association