



Conservation Compliance – Highly Erodible Land and Wetlands

OVERVIEW

Conservation compliance:

- Requires producers to farm according to an approved system or conservation plan if they plant annually tilled crops on highly erodible land; and
- Prohibits producers from planting on converted wetlands or converting wetlands for crop production.

The 2014 Farm Bill requires producers, and any affiliated individuals or entities to participating producers, to comply with these provisions who participate in most programs administered by the Farm Service Agency (FSA), the Natural Resources Conservation Service (NRCS) and the Risk Management Agency (RMA). Non-compliance may affect the following types of U.S. Department of Agriculture (USDA) program benefits:

- FSA loans and disaster assistance payments;
- NRCS and FSA conservation program benefits; and
- Federal crop insurance premium support.

COMPLIANCE WITH HELC AND WC PROVISIONS

Highly erodible land conservation (HELC) and wetland conservation (WC) provisions (known as “conservation compliance”) aim to reduce soil loss on erosion-prone lands and to protect wetlands for the multiple benefits they provide. HELC and WC provisions apply to all land that is considered highly erodible or a wetland, and that is owned or farmed by persons voluntarily participating in USDA programs,

unless USDA determines an exemption applies.

To comply with HELC and WC provisions, producers and affiliated persons must fill out and sign form AD-1026 certifying they will not:

- Plant or produce an agricultural commodity on highly erodible land without following an NRCS-approved conservation plan or system;
- Plant or produce an agricultural commodity on a converted wetland; or
- Convert a wetland that makes the production of an agricultural commodity possible.

In addition, producers planning to conduct activities that may affect their HELC or WC compliance; for example bringing new land into production, removing fence rows, conducting drainage activities or combining fields; must notify FSA by filing form AD-1026. FSA will notify NRCS, and NRCS will then provide highly erodible land or wetland technical evaluations and issue determinations if needed.

Form AD-1026 can be found at www.fsa.usda.gov/ad1026form.

AGRICULTURAL COMMODITY

An agricultural commodity is any crop planted and produced by annual tilling of the soil, including one-trip planters and sugarcane.

HIGHLY ERODIBLE LAND

Highly erodible land is any land that can erode at excessive rates because of its soil

properties and is designated by field and based on the proportion of the total field acreage that contains highly erodible soils.

Producers who produce agricultural commodities on land identified as highly erodible are required to farm such land in accordance with a conservation plan or system that is approved by NRCS and that substantially reduces soil loss. Producers proposing to produce agricultural commodities on highly erodible land that has no crop history prior to Dec. 23, 1985, (known as sodbusting) are required to farm such land in accordance with a conservation plan or system that provides for no substantial increase in soil erosion. A conservation plan or system to reduce soil erosion is not required for land that is not highly erodible.

WETLAND

A wetland is an area that:

- Has a predominance of hydric soils (wet soils);
- Is inundated or saturated by surface or groundwater (hydrology) at a frequency and duration sufficient to support a prevalence of hydrophytic (water tolerant) vegetation typically adapted for life in saturated soil conditions; and
- Under normal circumstances, supports a prevalence of such vegetation except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

EXPLANATION OF AFFILIATED PERSONS WHO NEED TO FILE AN AD-1026 FOR HELC AND WC COMPLIANCE PURPOSES

An “affiliated person” is an individual or entity who has a specific connection to the

individual or entity completing the AD-1026. Affiliated persons could be family members or business partners. See the fact sheet titled **“Conservation Compliance for Highly Erodible Land and Wetlands - Affiliated Persons”** for a description of who or what are considered affiliated persons.

AD-1026 FILING REQUIREMENT FOR AFFILIATED PERSONS

Although an individual or entity may be considered an affiliated person to a producer requesting benefits, an affiliated person who does not have a farming interest does not need to file an AD-1026. A “farming interest” for this purpose is an owner, operator or other producer on any farm. An example of an affiliated person who does not need to file an AD-1026 is a minor child that does not have a farming interest.

NRCS AND FSA ROLES IN MAKING DETERMINATIONS

When making HELC and WC compliance determinations:

- NRCS responsibilities include:
 - For HELC compliance:
 - Making highly erodible land determinations;
 - Working with producers to develop conservation plans and systems; and
 - When required, determining if highly erodible land is being farmed in accordance with a conservation plan or system approved by NRCS.
 - For WC compliance:
 - Making wetland determinations, including establishing if certain technical exemptions apply, such as prior converted cropland; and
 - Determining if a wetland conversion has occurred.

- FSA makes eligibility determinations, such as who is ineligible based upon NRCS technical determinations of HELC or WC non-compliance. FSA also acts on requests for the application of certain eligibility exemptions, such as the good faith relief exemption.

HIGHLY ERODIBLE LAND AND WETLAND IDENTIFICATION

FSA maintains the official USDA records of highly erodible land and wetland determinations. The determinations are recorded within the geographic information system and the automated farm and tract records maintained by FSA; however, it is important to know that determinations may not include all of the producer's land. Producers may obtain aerial imagery of their farms and a printout of their farm and tract records from the FSA office servicing their farm. If a producer is uncertain of the highly erodible land and wetland determinations applicable to their land, the producer should contact the appropriate USDA service center for assistance. For help in locating local USDA service centers, visit <http://offices.usda.gov>.

HELC AND WC NON-COMPLIANCE

The 2014 Farm Bill:

- Re-established the applicability of HELC and WC provisions to crop insurance financial support; and
- Made no change in HELC and WC implementation with respect to NRCS and FSA programs.

FSA AND NRCS PROGRAMS

Producers who are not in compliance with HELC and WC provisions are not eligible to receive benefits for most programs administered by FSA and NRCS. If a producer

received program benefits and is later found to be non-compliant, the producer may be required to refund all benefits received and/or may be assessed a penalty.

In particular, unless specific exemptions apply, a producer participating in FSA and NRCS programs must be in compliance with an NRCS-approved conservation plan or system for all highly erodible land used for agricultural commodity production; not have planted or produced an agricultural commodity on a wetland converted after Dec. 23, 1985; and after Nov. 28, 1990, must not have converted a wetland making the production of an agricultural commodity possible.

A producer who violates HELC or WC provisions is ineligible for applicable FSA and NRCS benefits for the year(s) in violation. A planting violation, whether on highly erodible land or a converted wetland, results in ineligibility for benefits for the year(s) when the planting occurred. A wetland conversion violation results in ineligibility beginning with the year in which the conversion occurred and continuing for subsequent years, until the converted wetland is restored or mitigated before Jan. 1 of the subsequent year.

HELC AND WC NON-COMPLIANCE – RMA – POLICIES REINSURED BY FCIC

Producers obtaining federally reinsured crop insurance will not be eligible for any premium support paid by the Federal Crop Insurance Corporation (FCIC) for any policy or plan of insurance if the producer:

- Has not filed an accurately completed AD-1026 with FSA certifying compliance with HELC and WC provisions; or
- Is not in compliance with HELC and WC provisions.

Unless specific exemptions apply, a producer must:

- Be in compliance with an NRCS-approved conservation plan for all highly erodible land;
- Not plant or produce an agricultural commodity on a wetland converted after Feb. 7, 2014; and
- Not have converted a wetland after Feb. 7, 2014, to make possible the production of an agricultural commodity.

A producer is ineligible for any premium support paid by FCIC on all policies and plans of insurance for the reinsurance year(s) (July 1 – June 30) following the reinsurance year of a final determination of a violation of HELC or WC provisions, including all administrative appeals, unless specific exemptions apply. Further, a producer will be ineligible for any premium support paid by FCIC on their policy or plan of insurance if they do not have a completed AD-1026 on file with FSA certifying compliance on or before the premium billing date for their policy or plan of insurance, unless otherwise exempted.

REGAINING ELIGIBILITY FOR BENEFITS LOST BECAUSE OF A VIOLATION

Producers who are found to be in violation of HELC or WC provisions, but acted in good faith and without the intent to violate, may file a request to regain eligibility for the period in violation at the FSA office where their farm records are administered. If the request is approved, producers are required to take corrective action within an established period. There are exemptions that may apply in limited circumstances.

FOR MORE INFORMATION

This fact sheet is provided for informational purposes; other restrictions may apply.

For more information on HELC and WC compliance, contact the FSA office or the NRCS office at a local USDA service center at <http://offices.usda.gov>. Additional information can be found online at www.fsa.usda.gov/compliance for FSA, www.nrcs.usda.gov for NRCS and www.rma.usda.gov for RMA. The regulations covering these provisions are set forth in the Code of Federal Regulations at 7 CFR Part 12.

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Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- 1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410;
- 2) fax: (202) 690-7442; or
- 3) email: program.intake@usda.gov.

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