

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Highly Erodible Land Conservation and
Wetland Conservation Provisions
6-CP (Revision 4)**

Amendment 6

Approved by: Deputy Administrator, Farm Programs



Amendment Transmittal

A Reasons for Amendment

Various subparagraph references have been updated to change 3-PL (Rev. 1) to 3-PL (Rev. 2) and to include 10-CM references.

Subparagraph 17 C has been amended to clarify County Office responsibilities and COC responsibilities.

Subparagraph 200 B has been amended to correct explanation of the NRCS technical determination of highly erodible when a field is split.

Subparagraph 218 B has been amended to clarify the wetland determination applicable to a third party conversion.

Paragraph 232 has been amended to clarify and correct information on additional time before ineligibility on the reinsured crop insurance subsidy from wetland conversions.

Paragraph 234 has been added to explain the equitable contribution provision added by the Agricultural Act of 2014 for the Federal Crop Insurance participants.

Paragraph 305 has been amended to clarify when a new AD-1026 is required and the appropriate eligibility flag when a determination is pending with NRCS.

Subparagraph 501:

- E has been amended to clarify when FSA-569 shall be prepared when wetland determination of WX is cropped.
- G has been amended to provide information when FSA-569 needs to be referred for producer's that checked Box 5 B on AD-1026.

Subparagraph 601 C has been amended to clarify conservation compliance ineligibility for FLP's.

Subparagraphs 603 A and F have been amended to add procedure for landlord exemption for the reinsured crop insurance subsidy benefit.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraphs 604 A and M have been amended to add procedure for tenant HELC exemption for the reinsured crop insurance subsidy benefit.

Subparagraph 606 G has been amended to clarify when a producer is considered to have requested benefits.

Paragraph 609 has been amended to provide that reinstatement eligibility procedure is also applicable to WC.

Paragraph 611 has been added to explain procedure for filing for the tenant/sharecropper exemption applicable to wetland planting violations for Federal Crop Insurance participants.

Subparagraph 621:

- A has been amended to clarify procedure when good faith is rescinded for HEL violations
- E has been amended to clarify GPR is also applicable to HEL wind erosion violations
- H has been amended to clarify program applicability to GPR's
- J has been amended to clarify assessing GPR's.

Subparagraph 631 F has been amended to update the appeal process reference.

Paragraph 637 has been amended to clarify programs for reduction in eligibility.

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Part 1 General Information

1 Objectives and Overviews of HELC and WC Provisions

A Objectives

The objectives of HELC and WC are to:

- reduce soil loss because of wind and water erosion
- protect the nation's long-term capability to produce food and fiber
- reduce sedimentation and improve water quality
- help preserve the nation's wetlands
- remove incentives for persons to produce agricultural commodities on HEL or converted wetland.

B Overview of HELC Provisions

The 1985 Act, as amended, provides that persons who produce an agricultural commodity on a field on which HEL is predominate, or designate land on which HEL is predominate to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity, shall be ineligible for benefits under certain programs administered by USDA, unless the production of an agricultural commodity on HEL is in compliance with an approved conservation plan or system or an exemption applies.

C Overview of WC Provisions

The 1985 Act, as amended, provides that, unless exempt, persons are ineligible for benefits under certain programs administered by USDA if they:

- plant an agricultural commodity on wetland that was converted after December 23, 1985
- convert a wetland after November 28, 1990, by draining, dredging, filling, leveling, or any other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible.

***--Note:** The date of February 7, 2014, applies to ineligibility for the federal crop insurance premium subsidy.--*

2 Source of Authority and Related References

A Legislative History

The source of authority for conservation compliance is the 1985 Act (Pub. L. 99-198) as amended by:

- Food Security Act of 1985 amendment (Pub. L. 100-28)
- Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624)
- Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127)
- Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171)
- Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246)
- Agricultural Act of 2014 (Pub. L. 113-79).

B Federal Regulations

Regulations governing the administration of HELC and WC provisions are provided in 7 CFR Part 12.

C Related Handbooks

The following handbooks relate to HELC and WC provisions:

- *--10-CM current for farm records and reconstitutions--*
- 3-CM for farm, tract, and crop data
- 8-CM for CLU's
- 3-PL (Rev. 2) for web-based subsidiary files for 2009 and subsequent years.

3 Applicability

A Program Applicability

The provisions of the handbook apply to all payments, loans, or other benefits under programs administered by FSA and NRCS with the following exceptions applicable to NRCS:

- Agriculture Management Assistance Program
- Emergency Watershed Protection Program
- Healthy Forests Restoration Program.

Federal crop insurance premium subsidies administered by RMA are a benefit subject to the provisions of this handbook.

B Person Applicability

The provisions of this handbook apply to any individual, legal entity, business enterprise, State, political subdivision, or agency that requests payments, loans, or other benefits subject to the provisions of this handbook and any affiliated persons as defined in this handbook.

17 FSA Responsibilities**A HELC and WC Determinations**

FSA has primary responsibility for making producer eligibility determinations about compliance with HELC and WC provisions. In addition to establishing field boundaries, FSA shall determine whether:

- an individual, joint venture, or entity is a producer on a HEL field or converted wetland
- the land was converted from native vegetation, such as grassland, rangeland, or woodland, to agricultural production after December 23, 1985

Note: See Exhibit 2 for the definition of native vegetation.

- a tenant or sharecropper is required to produce an agricultural commodity on HEL under the terms and conditions of an agreement between the landlord and the tenant or sharecropper
- the conversion of a wetland was caused by a third party.

B STC Action

STC shall direct the development and administration of HELC and WC provisions within the authorities and limitations of this handbook.

17 FSA Responsibilities (Continued)***--C COC and County Office Action**

County Office shall:

- provide general supervision for day-to-day HELC and WC operations
- obtain producer certification on AD-1026 of intentions to comply with HELC and WC requirements
- refer cases requiring a technical determination to NRCS
- determine the accuracy of AD-1026 certification according to the spot-check procedure in 2-CP
- notify landowners and operators requesting program benefits of any prior determinations made by NRCS on the land.

COC shall:--*

- make determinations of ineligibility for certain program benefits, as violations are discovered
- consult with Conservation District and NRCS about the adequacy of conservation systems, as needed
- consult with NRCS about determinations of third-party conversion
- provide producers with appeal rights and mediation
- determine whether a producer violated HELC or WC provisions
- when requested by the producer, in consultation with NRCS, determine whether the producer acted in good faith.

D Farm Loan Personnel Action

FSA farm loan personnel will determine whether proceeds of any loan made or guaranteed will be used for a purpose that will contribute to either of the following:

- excessive erosion
- draining, dredging, filling, leveling, manipulating, or converting a wetland.

Part 2 HELC and WC Compliance Provisions

Section 1 HELC Compliance

200 Overview of HELC Provisions

A Background

The 1985 Act, as amended, provides that persons who produce an agricultural commodity on a field on which HEL is predominate, or designate land on which HEL is predominate to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity, shall be ineligible for benefits under certain programs administered by USDA, unless the production of an agricultural commodity on HEL is in compliance with an approved conservation plan or system or an exemption applies.

This section covers:

- making HEL determinations
- exemptions that apply so producers with highly erodible fields may remain eligible for covered benefits.

B Definitions of Key Terms

Key terms and definitions, according to 7 CFR Part 12, are provided in the following table.

Note: These terms are used in this section relative to conservation plans and systems on fields that are HEL.

Term	Definition
Agricultural commodity	An <u>agricultural commodity</u> is any crop planted and produced by annual tilling of the soil, including tilling by 1-trip planters or sugarcane.
Highly erodible field	<p>A <u>highly erodible field</u> is a field where HEL is predominant. HEL shall be considered to be predominant if either:</p> <ul style="list-style-type: none"> • 33.33 percent or more of the total field acreage is identified as soil map units that are highly erodible • 50 or more acres in this field are identified as soil map units that are highly erodible. <p>*--Note: When a previously determined HEL field is split, any highly erodible soil map units within the newly formed fields, will result in the field determined HEL.--*</p>
Highly erodible land	<p><u>HEL</u> is land that has an erodibility index of 8 or more.</p> <p>Note: NRCS makes all HEL and highly erodible field determinations.</p>

200 Overview of HELC Provisions (Continued)

B Definitions of Key Terms (Continued)

Term	Definition
Conservation plan	<p><u>Conservation plan</u> means the document that:</p> <ul style="list-style-type: none"> • applies to highly erodible cropland • describes the: <ul style="list-style-type: none"> • conservation system applicable to the highly erodible cropland • decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules • is approved by the local soil and conservation district in consultation with the local committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and NRCS.
Conservation system	<p><u>Conservation system</u> means a combination of 1 or more conservation measures or management practices that are:</p> <ul style="list-style-type: none"> • based on local resource conditions, available conservation technology, and standards and guidelines in NRCS Field Office Technical Guides • designed to achieve, in a cost-effective and technically practicable manner, a substantial reduction in soil erosion or a substantial improvement in soil conditions on a field or group of fields containing highly erodible cropland when compared to the level of erosion or soil conditions that existed before the application of the conservation measures and management practices.
Conservation district	<p><u>CD</u> is a subdivision of a State or local government organized according to the applicable law to develop and implement soil and water conservation activities or programs.</p>

Subsection 2 Third Party Exemption

218 Conversion by a Third Party

A Definition of Third Party Exemption

Third party exemption means a person shall not be determined to be ineligible for program benefits as a result of the * * * conversion of wetland by actions of persons other than either of the following:

- the person applying for USDA benefits
- any of the predecessors in interest on the converted wetland.

Note: The conversion cannot be the result of a scheme or device to avoid compliance with WC provisions. See Part 8 for additional information on scheme or device.

Exception: See subparagraph C for an exception for drainage districts or similar entities.

B Conditions for Third Party Exemption

The following table lists conditions for third party exemption on wetland conversion.

IF...	AND...	THEN...
the conversion of the wetland was caused by persons other than either of the following: <ul style="list-style-type: none"> • the producer requesting benefits • any of the predecessors in interest on the converted wetland 	the conversion was not the result of a scheme or device to avoid compliance with WC provisions	COC can grant a third party conversion exemption *--(wetland determination of TP third party), unless--* subparagraph C applies.

Note: Further drainage improvement is **not** permitted without loss of eligibility for USDA benefits, unless NRCS determines further drainage would have MW on any remaining wetland values.

218 Conversion by a Third Party (Continued)

C Conversion by Drainage Districts

The following table shows:

- the effect of wetland conversion by drainage districts or similar entities
- third party exemption determinations.

IF...	AND...	THEN...
the converted wetland is within the boundaries of a drainage district or similar entity	the conversion of the wetland was caused by the actions of the drainage district or similar entity	<ul style="list-style-type: none"> • the activities of the drainage district or similar entity will be attributed to all persons within the boundaries of the district or similar entity, who are assessed for the activities of the district or entity • persons assessed by the drainage district or entity are ineligible for third party exemptions • the land converted by the drainage district or similar entity will be classified as: <ul style="list-style-type: none"> • CW if converted before November 28, 1990 • CWXX if converted on or after November 28, 1990.

D Eligibility Requirements for Land Converted by Drainage Districts

--Use the following tables to determine the eligibility requirements for land that was-- converted by drainage districts or similar entities according to subparagraph C.

IF the conversion of the wetland by the drainage district or similar entity was completed...	*--THEN producers will be determined ineligible for FSA and NRCS benefits in any year that...--*
before November 28, 1990	they plant or produce an agricultural commodity on CW.
on or after November 28, 1990	either of the following occurs: <ul style="list-style-type: none"> • they plant or produce an agricultural commodity on CWXX • they harvest a forage crop by mechanical means on CWXX. <p>Note: The act of conversion will not be a violation. Only the planting and harvesting restrictions apply for wetlands converted by a drainage district or similar entity.</p>

--Subsection 4 Provisions Unique to Federally Reinsured Crop Insurance Subsidy*231 Wetland Conversions****A Converting a Wetland Through February 7, 2014**

No individual or entity certifying to conservation compliance will be ineligible for federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524) if they or their affiliates:

- converted a wetland, as determined by NRCS, through February 7, 2014
- plant or produce an agriculture commodity on a converted wetland converted through February 7, 2014.

Note: Wetlands determined as CW+14 are assumed to be after February 7, 2014, unless proven by the producer and concurred/determined by NRCS to have been converted January 1, 2014, through February 7, 2014.

B Conservation Compliance Eligibility for Prior to CW+14 Wetland Violations

Individuals and entities that have wetland violations through February 7, 2014, and certify to conservation compliance based on provisions in AD-1026 Appendix, item 6 shall be set to “certified” in subsidiary to communicate their eligibility to RMA. However, their tract record must remain set to the appropriate wetland violation to communicate their ineligibility to FSA and NRCS.

If the producer is in violation with a conversion that is not associated to them in any tract record (affiliate violation or past violation and they no longer have the land), and they certify to compliance for these provisions they shall also be set to “certified”. However, their farm/tract eligibility, in the conservation compliance section of the web-based subsidiary, shall be set to “past violation” with year, State, and county where the violation occurred to communicate their ineligibility for FSA and NRCS programs.

Example: Joe Farmer converted a wetland in 2012. Joe Farmer did not restore or mitigate the wetland, but rather chose to drop participation in FSA programs. Joe Farmer’s tract file indicates “wetland converted after November 28, 1990”. Joe Farmer’s AD-1026 eligibility was changed to “not filed” according to paragraph 305. Joe Farmer buys federally reinsured crop insurance administered through RMA. Joe Farmer certifies to compliance based on AD-1026 Appendix, item 6 to retain eligibility for the reinsured crop insurance premium subsidy. Joe Farmer shall be changed to “certified” in the web-based eligibility, but shall have “wetland converted after November 28, 1990” remain in the tract data. Joe Farmer is compliant for FCIC, but noncompliant for FSA and NRCS.--*

232 Additional Time Before Ineligibility

A One Reinsurance Year Exemption

Unless another exemption applies, an individual or entity that was subject to conservation compliance in the past, and determined by NRCS to be in violation because of wetland conversion occurring after February 7, 2014, will have 1 reinsurance year after the final determination of violation, including all administrative appeals, to initiate a mitigation or restoration plan before becoming ineligible for the reinsured crop insurance premium *--subsidy. All practices within the mitigation or restoration plan must be implemented within 2 reinsurance years.--*

Example: If in May 2017, after NRCS has determined that an individual is in violation for converting a wetland and the individual has exhausted all administrative appeals, the person will have until June 30, 2018, to initiate * * * a mitigation or restoration plan to remedy the violation before becoming ineligible for the federal crop insurance premium subsidies starting with the 2019 reinsurance year (July 1, *--2018). All practices within the plan must be implemented by June 30, 2019.--*

B Two Reinsurance Year Exemption

An individual or entity subject to wetland compliance provisions for the first time, solely because of benefit of the reinsured crop insurance subsidy, and determined to be in violation (as determined by NRCS) because of wetland conversion occurring after February 7, 2014, will have 2 reinsurance years after the final determination of violation, including all administrative appeals, to be implementing all practices in a mitigation or restoration plan before becoming ineligible for the reinsured crop insurance premium subsidy.

C New Insurance Policy Exemption

When a policy or plan of insurance that provides coverage for an agricultural commodity is available to an individual or entity, including those who are a substantial beneficial interest holder, for the first time after February 7, 2014, as determined by RMA, an exemption *--applies. The ineligibility of premium subsidies for this policy or plan of insurance--* because of a wetland conversion will only apply to wetland conversions that are completed, as determined by NRCS, after the date the policy or plan of insurance first becomes available to the individual or entity.

232 Additional Time Before Ineligibility (Continued)**C New Insurance Policy Exemption (Continued)**

The exemption:

- applies only to the policy or plan of insurance that becomes available to an individual or entity for the first time after February 7, 2014, as determined by RMA
- does not exempt or otherwise negate the individual's or entity's ineligibility for federal crop insurance premium subsidies on any other policy or plan of insurance
- applies only if the individual or entity takes the steps necessary, as determined by NRCS, to mitigate all wetlands converted after February 7, 2014, in a timely manner, as determined by NRCS but not to exceed 2 reinsurance years.

D Conservation Compliance Eligibility

Those certifying to conservation compliance for the reinsured crop insurance premium subsidy benefit for either exemption in subparagraph A or B shall be changed to "certified" to communicate their eligibility to RMA. Their tract data shall be flagged with the appropriate wetland violation ("wetland converted after November 28, 1990") to communicate ineligibility for FSA and NRCS programs.

FSA shall prepare FSA-569 for the current crop year when these individuals and entities certify to these exemptions. FSA-569 should be clearly marked "PARTICIPATING FCIC PRODUCER FILING FOR AD-1026 FOR WC EXEMPTION" before submitting to NRCS. A folder shall be kept of the FSA-569 according to subparagraph 504 A.

When FSA-569 is returned within the * * * 2-reinsurance-year time period communicating the restoration or mitigation is completed "the area is identified is "NOT" CW" wetland violation tract data will be removed to restore eligibility for FSA and NRCS.

--232 Additional Time Before Ineligibility (Continued)*D Conservation Compliance Eligibility (Continued)**

If the restoration or mitigation is not completed within the required 1- or 2-reinsurance-year time period data NRCS will communicate this with FSA-569. Wetland tract data will not be updated and the individual or entity certifying to compliance for these exemptions will be changed to “not filed” after the exhaustion of appeal rights to communicate ineligibility to RMA.

If the producer is not associated with the tract (affiliate) to which the violation requesting exemption is applicable to, they shall have their farm/tract eligibility, in the conservation compliance section of the web-based subsidiary, set to “past violation” with year, State, and county where the violation occurred.

Note: It is an RMA determination if the exemption in subparagraph C (new insurance policy exemption) is applicable. An individual or entity may be eligible for the premium subsidy if it is new, but may not be on other policies or plans of insurance. Therefore those individuals and entities will be “not filed” for AD-1026 if either exemption in subparagraph A or B is not met.

233 Wetland Calls Applicable to FCIC Only**A Converted Wetland Payment in Lieu**

There is an exemption for wetland conversion for FCIC participants only that impacts less than 5 acres. In lieu of ineligibility for federal crop insurance premium subsidies for a policy or plan of insurance because a wetland conversion violation or concurrent with a planned wetland conversion occurring after February 7, 2014, a person may, if approved by NRCS, pay a contribution to NRCS in an amount equal to 150 percent of the cost of mitigating the converted wetland, as determined by NRCS. A person is limited to only one exemption, as determined by NRCS per farm. Wetlands granted this exemption are identified as “CWIL” (converted wetland payment in lieu) on NRCS-CPA-026e.--*

233 Wetland Calls Applicable to FCIC Only (Continued)**B Timely Assistance**

If an individual or entity files AD-1026 with FSA certifying compliance that requires an evaluation by NRCS for a certified wetland determination, and NRCS fails to complete the evaluation in a timely manner, they may be exempted from the ineligibility of the reinsured crop insurance subsidy. The exemption:

- applies only to violations that occurred before or during the time NRCS is completing the evaluation
- does not apply to any violations that occur subsequent to NRCS completing the evaluation
- does not apply if FSA or NRCS determines the person employed, adopted, or participated in employing or adopting a scheme or device to evade the provisions of wetland conservation compliance
- does not apply if the required evaluation is delayed because of unfavorable site conditions for the evaluation site conditions for the evaluation of soils, hydrology, or vegetation.

Wetlands granted this exemption by NRCS are identified as CWTA (converted wetland technical assistance) on NRCS-CPA-026e.

C Conservation Compliance Eligibility

Individuals and entities that are determined to have wetlands CWIL or CWTA and certify to conservation compliance, for FCIC, shall have their web-based subsidiary set to “certified” to communicate eligibility to RMA. However the appropriate wetland violations tract data will be set to “wetland converted after November 28, 1990” to communicate their ineligibility for FSA and NRCS.

If the producer is not associated with the tract (affiliated persons or no longer associated with the land) to which these wetland determinations apply, and they are certifying to compliance for FCIC, they shall have their farm/tract eligibility, in the conservation compliance section of the web based subsidiary, set to “past violation” with year, State, and county where the violation occurred to communicate ineligibility for FSA and NRCS.

--234 Equitable Contribution for False Certification*A Equitable Contribution**

Equitable Contribution is a provision of the Agricultural Act of 2014 that establishes a penalty, when participants of Federal Crop Insurance fail to accurately certify their compliance with the WC provisions, and either convert a wetland, or plant on a converted wetland, determined $CW \geq 14$, after June 1, 2015. This provision applies only to producers who are participants in the Federal Crop Insurance program.

Equitable Contribution:

- will **not** apply to any WC violations that receive a good faith exemption
- is based only on Federal Crop Insurance premium subsidies
- only applies to converted wetlands or planted converted wetland violations for which appeal rights have been exhausted
- does **not** provide relief from wetland mitigation or restoration requirements for restoration of eligibility
- only applies to planting violations on $CW \geq 14$ when no AD-1026 was filed (this will be rare).

B Failure to Certify

All participants requesting benefits subject to conservation compliance are required to self-certify their compliance. This includes reporting intended actions to FSA on question 7 of the AD-1026 form. Failure to certify occurs when a participant is found to be in violation of the WC provisions and they did not correctly complete form AD-1026 prior to performing wetland manipulations that resulted in a conversion. A check indicating “YES” on line 7 of the AD-1026 is sufficient minimum documentation to consider a person properly certified.

In addition, failure to correctly certify occurs when no AD-1026 is filed and a wetland violation occurs. This is the only time an incorrect certification is considered applicable to a planted converted wetland determined $CW \geq 14$.--*

--234 Equitable Contribution for False Certification (Continued)*C Timing**

This penalty applies only to situations where wetland conversion activities commenced after June 1, 2015, or to planting violations that occur on CW \geq 14 after June 1, 2015. If the penalty is applicable, it is assessed on Federal Crop Insurance premium subsidies received during the calendar year of the violation. This does not apply to any subsequent year's subsidy benefits.

D Assessment and Collection

The penalty is calculated by NRCS State Office Staff, with RMA assistance on determining the amount of premium subsidy applicable. The penalty is assessed at 100 percent of the Federal Crop Insurance premium subsidy for converted wetland violations and 50 percent for planting violations.

Note: If the converted wetland is determined by NRCS to meet the minimal effect exemption, there is no penalty assessed. If there is a converted wetland and planting violation determined, applicable to the same producer in the same year, the assessment is 100 percent.

NRCS issues a debt collection notice for the assessed penalty (Equitable Contribution) and the National Accounts Receivable Services Team submits the debt to the National Finance Center, who collects the payment.--*

235-299 (Reserved)

Part 3 AD-1026 and AD-1026 Appendix**Section 1 AD-1026 Purpose and Requirements****300 Overview****A Introduction**

The 1985 Act, as amended, requires that producers who request certain USDA program benefits (subparagraph 3 A) comply with HELC and WC provisions to be eligible for these benefits. Certification of compliance is required on AD-1026 for programs subject to these provisions to:

- inform the producer of the requirements to comply with HELC and WC provisions
- keep track of affiliated persons who are required to comply with the conservation compliance provisions by listing them on AD-1026
- serve as a means to determine whether the producer is in compliance and eligible for benefits
- obtain a signed certification that HELC and WC provisions will **not** be violated
- provide a means for making referrals to NRCS for determinations
- provide authorization for USDA representatives to enter and inspect all farms in which the producer has an interest for the purpose of confirming compliance with HELC and WC provisions.

B Importance of Accurate AD-1026 Certification

Before a producer is provided AD-1026 for certification and signature, County Offices shall make every effort to ensure that the producer understands:

- HELC and WC requirements
- that an incorrect certification can result in loss of all USDA benefits earned by the producer and the producer's affiliated persons.

301 AD-1026 Filing Requirements

A Who Must File AD-1026

AD-1026 certification is required for each producer who requests benefits under a program covered by HELC and WC provisions and their affiliated persons with farming interests determined according to paragraph 302.

Use the following table to determine who shall sign AD-1026 certification.

Note: Refer to 1-CM for procedure on authorized signatures.

IF the producer filing AD-1026 is...	THEN AD-1026 certification shall be signed by...
an individual	either of the following: <ul style="list-style-type: none"> • individual • authorized representative.
a partnership (all types)	authorized representative of the partnership.
a joint venture, including Indian tribal ventures	either of the following: <ul style="list-style-type: none"> • authorized representative of the joint venture • responsible official of the Indian tribal council. <p>Note: If a responsible official of the Indian tribal council signs AD-1026, each member of the tribal venture will not be required to file AD-1026.</p>
a business type of “Indians Represented by BIA”	responsible official of BIA. <p>Note: If a responsible official of BIA signs AD-1026, each member of the tribal group will not be required to file AD-1026.</p>
a government entity	authorized representative of the entity.
a corporation or LLC	authorized representative of the corporation or LLC.
an estate	authorized representative of the estate.
a trust (all types)	authorized representative of the trust.

B Where to File AD-1026

Producers shall file a single AD-1026 covering all of their farming interests within the United States and covered territories. AD-1026 shall be filed in the producer’s designated recording *--County Office as determined by 3-PL (Rev. 2). The recording County Office will update--* the producer’s eligibility files including a record of filing the AD-1026 certification.

301 AD-1026 Filing Requirements (Continued)

C When to File AD-1026

--There is no specific deadline for filing AD-1026 for FSA and NRCS benefits unless-- otherwise provided in specific program procedure. However, before a producer can be considered eligible for benefits subject to the provisions of this handbook, the producer and producer's affiliated persons, if applicable, must have filed and certified compliance with HELC and WC provisions. AD-1026 is considered filed and certified when AD-1026, Part D, item 10A is signed.

--The federal crop insurance subsidy administered by RMA has a filing deadline of June 1, before the beginning of the reinsurance year (July 1), for which premium subsidy is being requested. However, this is also a continuous certification that only requires updates according to paragraph 305.--

D AD-1026 Certifications for Programs Covering Past Years

In certain cases, a producer may apply for program benefits that are applicable to previous program or crop years.

If AD-1026 was **not** on file for the year of eligibility, the certification of compliance must be completed before issuing program payments. The County Office shall instruct the producer to complete AD-1026 for the year of eligibility by:

- entering the applicable program or crop year in Part A, item 3

Example: If a producer is completing an application in 2014 for program benefits associated with 2012, "2012" shall be entered in Part A, item 3.

- answering the questions on AD-1026 about the year indicated in Part A, item 3.

E Updating AD-1026 Field in Eligibility File

County Offices shall update the AD-1026 field in the web-based eligibility system according *--to 3-PL (Rev. 2).--*

F Joint Venture Without ID Number

For a joint venture requesting program benefits that does **not** have an IRS employer ID number, the members of the joint venture shall be considered the producers requesting benefits.

AD-1026 must be filed by each member of the joint venture that has a farming interest. Affiliated persons of the members with farming interests must also file AD-1026. Since the AD-1026 member certification statement "includes all land in which [the member has] or will have an interest", there is no need to obtain a separate AD-1026 from the joint venture.

301 AD-1026 Filing Requirements (Continued)

G Revocable Trust Without Employer ID Number

For a revocable trust requesting program benefits that does **not** have an IRS employer ID number, only the grantor shall be required to file AD-1026. There is no need to obtain a separate AD-1026 for the trust.

Affiliated persons of the grantor must also file AD-1026 if they have farming interests.

Since the AD-1026 certification statement by the grantor “includes all land in which [the grantor has] or will have an interest,” there is no need to obtain a separate AD-1026 from the trust.

H Updating Tract Records

Tract records, including the recording of NRCS HEL and wetland determinations, must be *--updated in the producer’s administrative County Office as determined by 3-CM or 10-CM.--*

For multi-county producers, the administrative County Office for a particular tract may be different than the producer’s recording County Office.

I Responsibility of Producer Requesting Benefits

The producer requesting benefits is responsible for providing the County Office, in which AD-1026 is filed, a copy of AD-1026 filed by their affiliated persons in their respective County Offices. County Offices may be able to assist the producer with that requirement by *--requesting an e-mailed PDF copy from the affiliated persons’ recording County Offices.--*

304 Distributing Copies of AD-1026**A Producer Copies**

Provide the producer with a copy of AD-1026 after AD-1026 has been signed.

Attach AD-1026 Appendix to the producer's AD-1026.

B Review Affiliated Persons' Copies

Ensure that all AD-1026's for the affiliated persons of the producer requesting benefits include either of the following:

- producer's signature on AD-1026
- statement of ineligibility on AD-1026.

305 When New AD-1026 Is Required To Be Filed**A Requirements for New AD-1026**

The producer shall file a new AD-1026 to replace a previously filed AD-1026 when any of the following changes are made to the producer's records after AD-1026 was signed:

- a "yes" answer applies for the question in AD-1026, Part B, item 6 or 7 for activities not previously reported on AD-1026 and technical determinations for these activities were **not** completed by NRCS
- any land that does **not** have a determination is broken out on farms or tracts associated with the producer
- the producer was determined ineligible because of a violation of HELC or WC provisions or a refusal to provide access to determine compliance
- *--affiliated persons in block 4 must be updated.

B Updating Web-Based Eligibility System

If a producer is required to file a new AD-1026, County Offices shall update the AD-1026 determination information in the web-based eligibility system according to 3-PL (Rev. 2). The previously filed AD-1026 is no longer valid. The new AD-1026 is referred to NRCS. Producers are still "certified" for AD-1026 while determinations are pending with NRCS.

If the producer is required to file a new AD-1026 because of updating affiliated persons, the update shall be "awaiting affiliate certification" until all affiliated persons listed in block 4 have filed AD-1026.--*

306 Completing and Obtaining AD-1026

A Example of AD-1026, Page 1

The following is an example of AD-1026, page 1.

*--

This form is available electronically. (See Page 2 for Privacy Act and Paperwork Reduction Act Statements)

AD-1026 U.S. DEPARTMENT OF AGRICULTURE
(10-30-14) Farm Service Agency

HIGHLY ERODIBLE LAND CONSERVATION (HEL) AND WETLAND CONSERVATION (WC) CERTIFICATION

Read attached AD-1026 Appendix before completing form.

PART A – BASIC INFORMATION		
1. Name of Producer	2. Tax Identification Number (Last 4 digits)	3. Crop Year
4. Names of affiliated persons with farming interests. Enter "None," if applicable.		
<p><i>Affiliated persons with farming interests must also file an AD-1026. See Item 7 in the Appendix for a definition of an affiliated person.</i></p> <p>5. Check one of these boxes if the statement applies; otherwise continue to Part B.</p> <p>A. <input type="checkbox"/> The producer in Part A does not have interest in land devoted to agriculture. Examples include bee keepers who place their hives on another person's land, producers of crops grown in greenhouses, and producers of aquaculture AND these producers do not own/lease any agricultural land themselves. Note: Do not check this box if the producer shares in a crop.</p> <p>B. <input type="checkbox"/> The producer in Part A meets all three of the following:</p> <ul style="list-style-type: none"> • does not participate in any USDA program that is subject to HELC and WC compliance except Federal Crop Insurance. • only has interest in land devoted to agriculture which is exclusively used for perennial crops, except sugarcane, and • has not converted a wetland after February 7, 2014. <p>Perennial crops include, but are not limited to, tree fruit, tree nuts, grapes, olives, native pasture and perennial forage. A producer that produces alfalfa should contact the Natural Resources Conservation Service at the nearest USDA Service Center to determine whether such production qualifies as production of a perennial crop.</p> <p>Note: If either box is checked, and the producer in Part A does not participate in Farm Service Agency (FSA) or Natural Resources Conservation Service (NRCS) programs, the full tax identification number of the producer must be provided, but establishment of detailed farm records with FSA is not required. Go to Part D and sign and date.</p>		
PART B - HELC/WC COMPLIANCE QUESTIONS		
Indicate YES or NO to each question. <i>If you are unsure of whether a HEL determination, wetland determination, or NRCS evaluation has been completed, contact your local USDA Service Center.</i>	YES	NO
6. During the crop year entered in Part A or the term of a requested USDA loan, did or will the producer in Part A plant or produce an agricultural commodity (including sugarcane) on land for which an HEL determination has not been made?		
7. Has anyone performed (since December 23, 1985), or will anyone perform any activities to:		
A. Create new drainage systems, conduct land leveling, filling, dredging, land clearing, or excavation that has NOT been evaluated by NRCS? <i>If "YES", indicate the year(s):</i> _____		
B. Improve or modify an existing drainage system that has NOT been evaluated by NRCS? <i>If "YES", indicate the year(s):</i> _____		
C. Maintain an existing drainage system that has NOT been evaluated by NRCS? <i>If "YES", indicate the year(s):</i> _____ Note: Maintenance is the repair, rehabilitation, or replacement of the capacity of existing drainage systems to allow for the continued use of wetlands currently in agricultural production and the continued management of other areas as they were used before December 23, 1985. This allows a person to reconstruct or maintain the capacity of the original system or install a replacement system that is more durable or will realize lower maintenance or costs. Note: If "YES" is checked for Item 7A or 7B, then Part C must be completed to authorize NRCS to make an HELC/WC and/or certified wetland determination on the identified land. If "YES" is checked for Item 7C, NRCS does not have to conduct a certified wetland determination.		
8. Check one or both boxes, if applicable; otherwise, continue to Part C or D.		
A. <input type="checkbox"/> Check this box only if the producer in Part A has FCIC reinsured crop insurance and filing this form represents the <u>first time</u> the producer in Part A, including any affiliated person, has been subject to HELC and WC provisions.		
B. <input type="checkbox"/> Check this box if either of the following applies to the producer and crop year entered in Part A:		
<ul style="list-style-type: none"> • Is a tenant on a farm that is/will not be in compliance with HELC and WC provisions because the landlord refuses to allow compliance, but all other farms not associated with that landlord are in compliance. (AD-1026B, Tenant Exemption Request, must be completed). • Is a landlord of a farm that is/will not be in compliance with HELC and WC provisions because of a violation by the tenant on that farm, but all other farms not associated with that tenant are in compliance. (AD-1026C, Landlord or Landowner Exemption Request, must be completed). 		
PART C – ADDITIONAL INFORMATION		
9. If "YES" was checked in Item 6 or 7, provide the following information for the land to which the answer applies:		
A. Farm and/or tract/field number: _____ <i>If unknown, contact the Farm Service Agency at the nearest USDA Service Center.</i>		
B. Activity: _____		
C. Current land use (specify crops): _____		
D. County: _____		

--*

329 Printing and Using Producer Farm Data Report

A Printing Producer Farm Data Report

A single Producer Farm Data Report covering all of the producer's farming interests in the *-country may be printed from any County Office according to 3-CM and 10-CM.--*

B Using Producer Farm Data Report

The Producer Farm Data Report includes the following:

- all of a producer's farming interests by county, farm, and tract numbers
- whether the tract includes any fields with HEL or wetlands.

The information on the Producer Farm Data Report may be useful to a producer when completing the questions on AD-1026. However, its use is **not** a requirement for producer certification on AD-1026.

330-334 (Reserved)

Section 3 Referrals to NRCS**356 When to Refer AD-1026 to NRCS****A Background**

AD-1026 documents the producer's cropping, drainage, and land manipulation intentions for determining whether a referral to NRCS for HEL or wetland determinations is necessary.

If referrals to NRCS are necessary, then AD-1026 serves as the transmittal document.

B Reviewing AD-1026

County Offices shall review AD-1026 completed by the producer and refer AD-1026 to NRCS when either of the following applies:

- *--“Yes” is answered in Part B, item 6, 7A, 7B, or 7C--*
- there is reason to believe the questions were not answered correctly and an NRCS determination is necessary before FSA can determine whether the producer is out of compliance.

356 When to Refer AD-1026 to NRCS (Continued)

C Referral to NRCS Because of Maintenance

When producers answer “Yes” on AD-1026, Part B, item 7C, they are certifying that they intend to perform maintenance on a drainage system or other manipulation of a wetland that took place before December 23, 1985. AD-1026, Part B, item 7 instructs FSA to refer a copy of AD-1026 when Part B, item 6, 7A, 7B, or 7C is answered “Yes”.

NRCS assistance is **not** required for normal maintenance of existing drainage systems. Therefore, NRCS-CPA-026e will **not** be issued by NRCS in response to receiving AD-1026 on which only Part B, item 7C is answered “Yes”. However, NRCS will maintain a record of these AD-1026’s as a record of maintenance that has been performed.

FSA County Offices shall provide NRCS with an “Informational Copy” of AD-1026 when the only reason for the referral is a “Yes” designation in Part B, item 7C.

Since NRCS-CPA-026e will **not** be provided to FSA in these cases, the FSA County Office shall **not** indicate a referral to NRCS is “pending” in the producer’s subsidiary file according *--to 3-PL (Rev. 2), subparagraph 29 C.--*

D Exemption for Referral to NRCS on Interseeded Permanent Pasture

Many acres of permanent pasture are annually interseeded in the early fall with small grains to provide winter grazing when grass goes dormant. According to the National Food Security Act Manual, interseeding a small grain for grazing does not require a HEL determination because of an exemption. The exemption is listed in the National Food Security Act Manual, Fifth Edition, Part 520.14, C. Therefore, no HEL determination is required, nor is an AD-1026 referral to NRCS required for these situations.

357 Preparation for Referral to NRCS

A Referrals to NRCS

When a referral to NRCS is necessary according to paragraph 356, use the following table to initiate the referral.

IF NRCS determination is...	THEN the County Office shall...
not required in another county	complete the steps in subparagraph B for their County Office.
required in another county	provide a copy of AD-1026 to the applicable County Office.

357 Preparation for Referral to NRCS (Continued)

B County Office Referrals to NRCS

County Offices shall prepare the necessary documents for referral to NRCS for HEL or wetland determinations for land located in their counties according to the following table.

Task	Action
Prepare copies of aerial imagery	<p>Prepare 3 complete sets of copies that require determinations as follows.</p> <ul style="list-style-type: none"> • List the tract number or numbers with the owner’s name on the reverse side of the copy or attach a copy of the Farm Producer Data Report and circle applicable tract numbers. • Delineate fields or subdivisions of fields for which a “Yes” answer on *--AD-1026, Part B, item 6 or 7 applies and determinations are--* needed. • Identify any drainage activity completed or proposed. <p>Note: Determinations are needed for:</p> <ul style="list-style-type: none"> • fields that either have been or will be planted to agricultural commodities • drainage activities that have not been previously evaluated by NRCS.
--Complete AD-1026, Part D, item 11	<p>On AD-1026, Part D, item 11:</p> <ul style="list-style-type: none"> • enter the date AD-1026 is referred to NRCS-- • County Office employee responsible for the referral to NRCS shall sign and date.
Send to NRCS	Attach the prepared imagery to copies of AD-1026, and send to NRCS.

357 Preparation for Referral to NRCS (Continued)

C Example of AD-1026 Referral for Multi-County Producer

The following table provides an example of referring AD-1026 to NRCS for a multi-county producer.

Situation: Producer X has farming interests in Counties A, B, and C. County C is the recording County Office. The question in AD-1026, Part B, item 7A is answered “Yes”. County A, farm 200, tract 1025, field 1, is indicated on AD-1026, Part C.

Step	Action
1	County C makes a copy of AD-1026 and forwards to County A.
2	County A receives AD-1026 for Producer X from recording County C. County A shall: <ul style="list-style-type: none"> • complete a farm photocopy for the field that needs a determination as listed in *--AD-1026, Part D--* • contact the producer, if additional information is needed • attach a farm photocopy to a copy of AD-1026, and send to NRCS.
3	When NRCS determination is received, County A shall: <ul style="list-style-type: none"> • *--record determination for the tract according to 3-CM or 10 CM--* • record NRCS determination in the Service Center GIS system • forward copies of NRCS-CPA-026e to recording County C.

358-399 (Reserved)

C Example of NRCS-CPA-026e (Continued)

DEFINITIONS OF WETLAND LABELS	
AW	<u>Artificial Wetland</u> : An area that was formerly a non-wetland area under natural conditions but now exhibit wetland characteristics because of the influence of human activities. These areas are exempt from the Food Security Act of 1985, as amended. This label includes irrigation induced wetlands.
CC	<u>Commenced Conversion</u> : A wetland, farmed wetland, farmed wetland pasture, or converted wetland on which the conversion began but was not completed before December 23, 1985, was approved by FSA to continue, and the conversion was completed by January 1, 1995.
CPD	<u>COE Permit with Mitigation</u> : A converted wetland authorized by a permit issued under Section 404 of the Clean Water Act. Production of agricultural commodities is allowed subject to conditions of the permit.
CWE	<u>Categorical Minimal Effect</u> : A wetland that meets specific categories of conversion activities that have been determined by NRCS to have minimal effect, individually and cumulatively, on the function and values of the wetland and the wetlands in the watershed.
CW	<u>Converted Wetland</u> : A wetland converted between December 23, 1985 and November 28, 1990. Production of an agricultural commodity or additional manipulation of these areas will yield USDA benefit ineligibility. Also, these areas are wetlands converted after December 23, 1985 by a county, drainage district or similar entity. For these instances, production of an agricultural commodity or forage for mechanical harvest or additional manipulation will cause ineligibility for USDA program benefits.
CW+year	<u>Converted Wetland +(year the conversion occurred)</u> : A wetland converted after November 28, 1990 where the USDA program participant is ineligible for benefits until the wetland is restored or mitigated unless an exemption applies.
CWNA*	<u>Converted Wetland Non-Agricultural Use</u> : A wetland converted after November 28, 1990 to a use other than agricultural commodity production.
CWTE	<u>Converted Wetland Technical Error</u> : A wetland converted or commenced after December 23, 1985 based on an incorrect NRCS determination. This label does not apply to obvious wetlands as defined in the National Food Security Act Manual.
FW	<u>Farmed Wetland</u> : A wetland that is farmed under natural conditions, was manipulated and planted before December 23, 1985 but still meets wetland criteria, and addresses either of the pothole, playa or pocosin criterions. These areas may be farmed and maintained as documented before December 23, 1985 as long as they are not abandoned (i.e., management or maintenance for commodity production ceased for five consecutive years).
FWP	<u>Farmed Wetland Pasture or Hayland</u> : A wetland that is used for pasture or haying under natural conditions, was manipulated and planted before December 23, 1985, meets the inundation or saturation criteria, but still meets wetland criteria. These areas may be farmed and maintained as documented before December 23, 1985 as long as they are not abandoned (i.e., management or maintenance for commodity production ceased for five consecutive years).
MIW	<u>Mitigation Exemption</u> : A converted wetland, farmed wetland or farmed wetland pasture of which the acreage, functions and values lost have been compensated for through an NRCS approved mitigation plan.
MW	<u>Minimal Effect Exemption</u> : A converted wetland that is exempt from the wetland conservation provisions of the Food Security Act of 1985, as amended, based on an NRCS determination that the conversion has or will have a minimal effect, individually and cumulatively, on the functions and values of the wetland and the wetlands in the watershed.
MWM	<u>Mitigation Site</u> : The site of wetland restoration, enhancement, or creation serving as mitigation for the mitigation exemption (MIW) site.
NI*	<u>Not Inventoried</u> : An area where no wetland determination has been conducted.
NW	<u>Non-Wetland</u> : An area that does not contain a wetland. Also includes wetlands converted before December 23, 1985, but a commodity crop was not produced and the area does not meet wetland criteria. The area has not been abandoned.
PC	<u>Prior Converted Cropland</u> : A wetland converted to cropland before December 23, 1985, and as of December 23, 1985 was capable of being cropped and did not meet farmed wetland hydrology criteria. These areas are not subject to the wetland conservation provisions of the Food Security Act of 1985, as amended, unless further drainage manipulation affects adjacent wetlands.
TP	<u>Third Party Exemption</u> : A wetland converted after December 23, 1985 by a third party who is not associated with the participant, and without the participant's collusion, fraud, scheme or device. A third party does not include predecessors in interest on the tract, drainage districts, or other local government entities.
W	<u>Wetland</u> : An area meeting wetland criteria that was not converted after December 23, 1985. These areas include farmed wetlands and farmed wetland pasture that have been abandoned.
WX	<u>Manipulated Wetlands</u> : A wetland manipulated after December 23, 1985, but the manipulation was not for the purpose of making production possible and production was not made possible. These areas include wetlands manipulated by drainage maintenance agreements.
*These labels are no longer used for certified wetland determinations completed after posting of the revised National Food Security Act Manual Part 514-516 (February 8, 2008).	
<small>The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 726-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.</small>	

400 Information From NRCS on NRCS-CPA-026e or Wetland Certification Letter (Continued)**D Notification of Certified Wetlands by Letter Instead of NRCS-CPA-026e**

NRCS will provide an official “certified” wetland determination to producers upon receiving a written request from the producer. Areas with previous wetland determinations that are **not** changed from an earlier NRCS-CPA-026 or NRCS-CPA-026e will be certified as accurate by a letter to the producer with a copy to FSA. County Offices shall:

- attach the letter to the original NRCS-CPA-026 or NRCS-CPA-026e for the tract
- coordinate documenting certified wetland on official aerial photography according to 2-CP, paragraph 495
- *--update the wetland certification for the tract according to 3-CM or 10-CM.--*

E Providing NRCS With Names and Addresses

NRCS has adopted a policy to officially notify **all** producers on tracts about technical determinations completed by NRCS.

FSA employees shall provide NRCS with the current names and addresses of the operator, owners, and other producers for each tract for which NRCS requests this information. Ensure that the latest available information is provided to NRCS.

Note: This process is in place for determinations requested on FSA-569. FSA is required to list the names and addresses for all producers on FSA-569. NRCS uses this information for notifying affected producers.

422 Updating Tract Records

A Overview

Based upon the finalized NRCS determinations documented on NRCS-CPA-026 and aerial
 --imagery, the County Office shall update the tract file according to 3-CM or 10-CM.--
 Conservation compliance tract files reflect:

- NRCS HEL determinations
- NRCS wetland determinations
- producer exemptions, such as good faith or landlord/tenant.

Although NRCS determinations are made at the field level, FSA maintains summarized data at the tract level.

Example: If at least 1 field within a tract has been determined to be HEL, the FSA tract file will indicate HEL for the tract.

B Tract HEL Selections

--Tract records shall be updated according to 3-CM or 10-CM using the following selections-- to record NRCS HEL determinations.

IF...	AND the producer certifies on AD-1026...	THEN select...
no HEL determinations have been completed on the tract		HEL determinations not complete.
at least 1 field on the tract has been determined non-HEL, but not all determinations have been completed		
at least 1 field on the tract has been determined HEL, but all determinations have not been completed	compliance with HELC and WC provisions	HEL, conservation system is being actively applied.
	noncompliance with HELC and WC provisions	HEL, conservation system is not being applied.
all HEL determinations are complete and the tract contains no HEL fields		classified as not HEL.
all HEL determinations are complete and the tract contains at least one HEL field	compliance with HELC and WC provisions	HEL, conservation system is being actively applied.
	noncompliance with HELC and WC provisions	HEL, conservation system is not being applied.
HEL determinations are either complete or incomplete for the tract, but an agricultural commodity is not being produced on the tract	compliance with HELC and WC provisions	HEL, conservation system is not required, no agricultural commodity.
producer has received an NRCS variance on former CRP land		HEL, producer has been granted 2 years to implement an approved conservation system on former CRP land.

422 Updating Tract Records (Continued)

C Recording HEL Field Determinations

Field determinations shall be recorded as an attribute of the CLU layer within GIS.

D Tract File Wetland Selections

--Tract records shall be updated according to 3-CM or 10 CM using the following selections-- to record NRCS wetland determinations.

IF...	THEN select...
wetland determinations have been completed for the entire tract and there are no W or FW on the tract	tract does not contain a wetland.
wetland determinations have not been completed for the entire tract and there are no W or FW on the portion of the tract with NRCS determinations	wetland determinations not complete.
at least a portion of the tract has received an NRCS determination of W or FW	tract contains a wetland or farmed wetland.

E Other Wetland Determinations

The tract file records the existence of wetlands that have a direct impact upon producer eligibility. The types of wetland designations recorded in the tract file are W and FW.

Other NRCS wetland determinations shall be documented in the county GIS. CLU's within GIS include wetland attributes determined by NRCS.

Example: PC, AW, etc.

423-438 (Reserved)

Section 3 Providing Producer Record Changes to NRCS

439 NRCS Requested Information

A Providing NRCS Requested Information

If requested by NRCS, County Offices shall provide a copy of FSA-156EZ and, when applicable, a copy of the appropriate reconstitution report for a farm when changes in 1 or more of the following records are made:

- owner
- operator
- tract division
- farm division
- farm combination.

Note: Only provide NRCS with FSA-156EZ printed for changes listed in this paragraph.

B Referring Tract Changes to NRCS

Use the following table as a guide to refer tract data changes to NRCS.

Step	Action
1	*--Print FSA-156EZ file according to 3-CM or 10-CM.--*
2	Make a copy of the prior FSA-156EZ on file.
3	<p>Highlight the following old and new changes on FSA-156EZ:</p> <ul style="list-style-type: none"> • name and address of the operator of the farm • last 4 digits of the operator’s ID number • tract number or numbers for the farm • owner of the tract or tracts. <p>Note: Manually enter the type of change and the date record was updated.</p>

439 NRCS Requested Information (Continued)

B Referring Tract Changes to NRCS (Continued)

Step	Action	
4	IF a change in producer records...	THEN...
	<p>does not involve a reconstitution</p> <p>involves a reconstitution</p>	<p>forward FSA-156EZ's to NRCS.</p> <ul style="list-style-type: none"> • access the Reconstitution Reports Menu according to 2-CM • select the appropriate reconstitution report • highlight the following applicable changes: <ul style="list-style-type: none"> • type of reconstitutions • parent farm number • parent tract number • resulting tract numbers • attach to corresponding FSA-156EZ.

Note: It is important that County Offices explain the changes reflected on these reports to NRCS.

440-499 (Reserved)

501 Request for NRCS Compliance Check Using FSA-569 (Continued)

D FSA-569 for HELC Spot Checks

Prepare FSA-569 to check for potential noncompliance if any producer on the farm filed AD-1026 for the crop year and planted agricultural commodities on:

- land for which a HEL determination has **not** been made
- HEL without applying practices required by an approved conservation plan.

Note: FSA-569 shall also be prepared according to subparagraph F if NRCS requests FSA-569.

E FSA-569 for WC Spot Checks

Prepare FSA-569 if a suspected WC noncompliance has occurred according to the following table.

Note: If NRCS requests FSA-569:

- the following table does **not** apply
- FSA-569 shall be prepared according to subparagraph F.

IF the suspected WC noncompliance is...	AND an effective AD-1026 is...	THEN...
planting an agricultural commodity on a converted wetland	on file for any producer on the farm for the crop year	prepare FSA-569 for referral to NRCS.
	not on file for any producer on the farm for the crop year	FSA-569 shall not be prepared.
converting a wetland after November 28, 1990	on file for any producer on the farm for the crop year	prepare FSA-569 for referral to NRCS.
	not on file for any producer on the farm for the crop year	FSA-569 shall be: <ul style="list-style-type: none"> • clearly marked “NONPARTICIPATING PRODUCER” at the top of FSA-569 • prepared for referral to NRCS.
*--planting an agricultural commodity on WX (wetland was manipulated after December 23, 1985, but agriculture production was not made possible)	on file for any producer on the farm for the crop year	prepare FSA-569 for referral to NRCS.
	not on file for any producer on the farm for the crop year	FSA-569 shall not be prepared.--*

501 Request for NRCS Compliance Check Using FSA-569 (Continued)

F FSA-569’s Requested by NRCS

To ensure an organized and uniform method of recording HELC and WC noncompliance between FSA and NRCS, NRCS uses FSA-569 to notify FSA of HELC or WC noncompliance discovered by NRCS.

FSA-569 shall be prepared according to the following table **if** NRCS requests FSA-569.

Step	Agency	Action
1	NRCS	Request FSA to prepare FSA-569 for farms for which noncompliance is discovered by NRCS.
2	FSA	Complete FSA-569, Part A for the crop year requested by NRCS according to subparagraph 502 B.
3	FSA	Mark the area for which the determination is made on two FSA aerial copies, and attach to FSA-569 according to subparagraph 502 D.
4	NRCS	Record the NRCS determination on FSA-569, Part C, and return to FSA after the NRCS technical determination is final according to subparagraph 502 E.

***--G FSA-569 and AD-1026, Box 5B**

A producer certifying to conservation compliance on AD-1026 may check box 5B if all 3 parameters are met:

- does not participate in any USDA program that is subject to HELC and WC compliance except Federal Crop Insurance
- only has interest in land devoted to agriculture which is exclusively used for perennial crops (except sugarcane)
- has not converted a wetland after February 7, 2014.

Producers in this situation may not have full farm records established according to subparagraph 641 D. FSA-569 still must be requested if a suspected violation from FSA or NRCS is detected, or a whistle blower complaint is filed.

Prepare FSA-569 with “NA” (not applicable) for farm and tract information. Contact FSA State designated POC for RMA (4-RM, Exhibit 11). State designated POC’s shall work with their RMA POC to obtain RMA acreage reporting information to determine producer information and location. Once this has been obtained from RMA, fill in producer information and mark the area for which the determination is made on two FSA aerial copies. Attach to FSA-569 according to subparagraph 502 D, and forward to NRCS.--*

502 Completing FSA-569 (Continued)

E NRCS Action on Referred FSA-569's

NRCS shall complete FSA-569, Part C according to the following table for determinations checked in FSA-569, Part B.

Step	Instructions for NRCS	
1	IF... access to the land was denied	THEN... NRCS employee shall: <ul style="list-style-type: none"> • check (✓) the block in Part C to indicate that NRCS was refused access to the land to verify compliance • complete step 5 and immediately refer FSA-569 to FSA.
	NRCS is allowed to complete determinations checked in Part B	go to step 2.
2	Check the final NRCS determination in Part C, item 1.	
3	Enter the field numbers for which the determination applies in Part C, item 2.	
4	Enter the acres for which the determination applies in Part C, item 3.	
5	NRCS employee shall: <ul style="list-style-type: none"> • refer FSA-569 to FSA according to paragraph 501 • sign and enter the referral date in Part C, item 4 before referring to FSA. 	

502 Completing FSA-569 (Continued)

F NRCS Determinations for FSA-569 Requests

Take action according to the following table for determinations made by NRCS for FSA-569 requests.

Reconsideration, appeal, and mediation procedures for adverse determinations shall be followed according to 1-APP.

IF NRCS determines...	AND...	THEN...
HELCS compliance is met		update automated tract record *--according to 3-CM or 10-CM.--*
the area identified for verification of whether an agricultural commodity was planted on CW is determined not to be CW		
the area is not a wetland that was converted after November 28, 1990		
HELCS compliance is not met	the field is not planted to an agricultural commodity	refer FSA-569 back to NRCS to change their determination because HEL fields that are not planted to agricultural commodities do not require compliance with a conservation plan or system.
	the field is planted to an agricultural commodity	<ul style="list-style-type: none"> • NRCS will issue a preliminary technical determination to producers, and submit a copy to FSA • FSA shall determine producers who will be ineligible and to what extent according to Part 6 • NRCS will hold FSA-569 until the NRCS technical determination becomes final. On the date the determination is final, NRCS will enter the date in item 10 and sign and date FSA-569, Part C, item 4 and refer to FSA for denial of benefits
the area identified for verification of whether an agricultural commodity was planted on CW is determined to be CW	the NRCS technical determination is final	<ul style="list-style-type: none"> • NRCS will hold FSA-569 until the NRCS technical determination becomes final. On the date the determination is final, NRCS will enter the date in item 10 and sign and date FSA-569, Part C, item 4 and refer to FSA for denial of benefits
the area is a wetland that was converted after November 28, 1990		<ul style="list-style-type: none"> • FSA will immediately begin withholding benefits when NRCS reports the technical determination is final.
access to the land was denied for making a compliance determination		take action according to paragraph 503.

503 NRCS Denied Access to Determine Compliance**A Access Requirement**

7 CFR Section 12.7 states the following, *“In order for a person to be determined to be eligible for any of the benefits specified in Sec. 12.4: . . .(5) The person applying for the benefits must authorize and provide representatives of USDA access to all land in which such person has an interest for the purpose of verifying any such certification”*

The statement, “Signature on Form AD-1026 gives representatives of USDA authorization to enter upon and inspect all farms in which the producer has an interest for the purpose of confirming the above statements”, is provided on AD-1026. Therefore, by signing AD-1026, the producer authorizes the required access.

B Determining Producers Ineligible

If NRCS reports on FSA-569 that NRCS was refused access to the land to determine compliance:

- all producers who must meet HELC and WC compliance requirements on the land for which access is denied and their affiliated persons shall be determined ineligible for benefits
- notify all affected producers of their ineligibility because of refusal of access to their land by NRCS, and provide appeal rights
- AD-1026 on file is considered revoked
- change the certification option for AD-1026 in subsidiary eligibility to “Not Filed”
--according to 3-PL (Rev. 2) for all affected producers.--

C Regaining Eligibility

Any producer determined ineligible as a result of refusing access to land to determine compliance must allow access and file a new AD-1026 to regain eligibility.

504 Pending FSA-569 Determinations

A Maintaining Folder of Pending FSA-569 Determinations

FSA personnel shall maintain a folder with copies of pending FSA-569's that have been referred to NRCS for determinations. To avoid unnecessary delays and maintain communication between FSA and NRCS about compliance determinations to be made, on the first week of each month:

- submit to NRCS a list of farm and tract numbers with outstanding FSA-569's that were referred to NRCS, for which FSA has **not** received a final NRCS technical determination
- request that NRCS respond with the current status of the pending determinations.

Examples of current status of pending NRCS determinations:

- Field visit scheduled with producer's representative to review preliminary technical determination issued on (enter date).
- Preliminary technical determination not completed. Scheduled for (enter date).
- Preliminary technical determination completed on (enter date) will complete FSA-569 when the determination becomes final.

B Reports to Ensure Joint Agency Coordination

County Offices shall report to the State Office any FSA-569's for which NRCS has **not** made the preliminary technical determination within 60 calendar days after FSA-569 was referred to NRCS.

Note: Cases with preliminary technical determinations that are waiting to become final shall **not** be referred to the State Office according to this paragraph. Only report cases when the preliminary technical determination is **not** made.

State Offices shall:

- attempt to resolve with NRCS at the State level any reported delays in making preliminary technical determinations
- report to DAFP if unreasonable delays for making a preliminary technical determination for FSA-569's that were referred cannot be resolved with NRCS.

601 Effective Year to Deny Program Benefits (Continued)

C Ineligibility for Loans and LDP's

For producers who do **not** comply with HELC/WC provisions, County Offices shall:

- for MAL's and LDP's:
 - **not** disburse loans and LDP's for any crop for the crop year in which noncompliance occurs
 - for existing loans that were disbursed before noncompliance was determined for the crop year, call the loans according to applicable LP handbooks
 - require refund of any LDP for the years in violation
- for FSFL's, the producer must be in compliance with HELC/WC provisions before the loan is approved and disbursed

Note: If a violation is determined after the FSFL has been disbursed, the FSFL is allowed to remain outstanding as long as the producer makes the annual installment payments timely.

- *--for FLP's, producers are ineligible if the loan proceeds could be considered as contributing to the HELC or WC violations.

Note: All violations must be reported to the FLP officer to determine if the violator is an FLP participant. If so, the FLP officer will make a determination on FLP ramifications from the violation according to subparagraph 17 D.--*

D Multiple Year Planting Violations

The following table provides the rules for denying benefits for producers for which planting violations are discovered that would result in ineligibility for benefits for multiple years.

IF a planting violation...	AND COC determines that...	THEN the producer shall be ineligible for benefits subject to HELC and WC provisions for...
occurred on the same converted wetland, which would make a producer ineligible for benefits for more than 1 year	both of the following apply: <ul style="list-style-type: none"> • the producer was unaware that the activities would be considered a violation, based on the information available to the producer • the act was not a scheme or device to circumvent the provisions of the program 	the most current crop year in which both of the following apply: <ul style="list-style-type: none"> • the producer requested benefits • the violation occurred on the same land.

601 Effective Year to Deny Program Benefits (Continued)

D Multiple Year Planting Violations (Continued)

IF a planting violation...	AND COC determines that...	THEN the producer shall be ineligible for benefits subject to HELC and WC provisions for...
	either of the following applies: <ul style="list-style-type: none"> • the producer could reasonably have known that the activities would be considered a violation • the act was a scheme or device to circumvent the provisions of the program 	each year that the violation occurred on the same land.
occurred on separate parcels of converted wetland, which would make a producer ineligible for benefits for more than 1 year		each year that a WC violation occurred.
occurs on HEL		each crop year for which NRCS reports a violation on FSA-569.

E Wetland Conversion Violations

Unless an exemption applies, producers who are determined responsible for conversion of wetlands after November 28, 1990, shall be ineligible for FSA and NRCS benefits, subject to HELC and WC provisions, for:

- the crop or program year benefits that are equal to the calendar year that NRCS determined the conversion occurred
- each subsequent crop or program year after the conversion occurred, unless NRCS determines the wetland has been restored or mitigated before January 1 of the subsequent crop or program year.

Notes: This provision applies regardless of when the conversion violation is discovered.

See example in subparagraph B.

602 Determining Producers Who Are Ineligible (Continued)**D Group Wetland Projects**

The activities of a Water Resource District Board or similar entity will be attributed to the persons in the district who are assessed for the activities of the Water Resource Board or similar entity.

Example: If a Water Resource District Board constructs a drainage ditch, and a person's wetland is therefore converted, the person shall be considered to have caused or permitted the drainage. See subparagraph 218 D for producer eligibility requirements on land converted by a drainage district or similar entity.

E Extent of Ineligibility of Affiliated Persons

The extent of ineligibility determined according to this paragraph for the producer who violated shall be the same for the affiliated persons determined according to paragraph 302.

Exception: For business enterprises with members or shareholders who violate the benefits of the affiliated business enterprise shall be reduced in proportion to the interest held in the business enterprise by the violating member or shareholder.

Example: Member A, who owns 25 percent of the shares in Corporation A, violates on his or her individual operation. Member A is ineligible for benefits. Benefits to affiliated person Corporation A shall be reduced by 25 percent.

Currently there is not an automated process to make a percentage of an entity ineligible for those situations when a member of an entity violated HELC/WC provisions. Therefore, County Offices shall multiply the percentage of the violating member's share of the entity by the amount of the payment. The nonautomated program code of XXAPPR (affiliated person payment reduction) shall be used to reduce or collect back the payment.

F Updating Eligibility Record for Affiliated Persons

If a producer is determined to be ineligible for program benefits because he or she is an affiliated person of a producer who has violated the HELC/WC program provisions, update ~~the affiliated person's AD-1026 certification according to 3-PL (Rev. 2). This will ensure~~ that benefits will **not** be issued to the ineligible affiliated person.

603 Landlord Exemption – HELC or WC Planting Violation

A Landlord Exemption Rule

Ineligibility of a tenant or sharecropper for benefits shall **not** cause a landlord to be ineligible for program benefits on land other than land in which the violating tenant or sharecropper has an interest.

The landlord exemption shall **not** apply if the production of an agricultural commodity on *--HEL or converted wetland is required under the terms and conditions of an agreement between the landlord and tenant or sharecropper.

Following are landlord exemption provisions for Federal Crop Insurance participants.

- The premium subsidy shall be reduced rather than a loss of all premium subsidy.
- The percentage reduction will be determined by comparing the total number of cropland acres on the farm where the violation occurred to the total number of cropland acres on all farms in which the landlord (as owner or operator) has an interest.
- The percentage reduction will be applied to all policies and plans of insurance of the landlord in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.
- If the landlord and tenant or sharecropper are insured under the same policy (as determined by RMA), the landlord will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.
- Is only applicable to planting violations on converted wetlands determined CW \geq 2014.--*

Note: All references to landlord exemptions in this handbook shall also include landowners.

B When Landlord Exemption Applies

The landlord exemption shall be applied according to AD-1026C, page 2. See subparagraph G.

Note: A landlord who converts a wetland on or after November 28, 1990, does **not** qualify for a landlord exemption, but may still maintain eligibility for federal crop insurance premium subsidies if converted through February 7, 2014.

C Updating Eligibility Record

If a producer is granted an exemption under the landlord exemption rule, update the “HEL
--Producer Exception” field for the farm or tract, as applicable, according to 3-CM or 10 CM by selecting “Landlord/Tenant” from the drop-down box.--

603 Landlord Exemption – HELC or WC Planting Violation (Continued)

D Purpose of AD-1026C

AD-1026C shall be used for documenting all landlord or landowner exemption:

- certifications of eligibility by producers
- determinations by COC.

E Farms With Multiple Ownership Tracts

If a HELC or WC noncompliance occurs on farms with multiple ownership tracts, then the landlord or landowner on:

- the noncomplying tract is ineligible for benefits unless the landlord exemption applies according to this paragraph
- multiple ownership farms:
 - will **not** be affected by other noncomplying tracts on the farm if the landlord or landowners have complied on their tracts
 - is ineligible to receive benefits from the noncomplying tracts.

F Where to File AD-1026C

AD-1026C shall be filed by the landlord in the administrative County Office for the farm on which the violation occurs.

The administrative County Office for the farm where the violation occurred may **not** be the recording County Office for the producer; however, COC in the administrative County Office would be in the best position to make the determination, based on the circumstances surrounding the particular farm.

--Administrative County Office shall provide a copy of all approved AD-1026C's to the State Conservation Compliance Specialist. Information to be included is the total cropland acres of the landlord (all cropland acres owned or operated). State Conservation Compliance Specialist shall provide the National Conservation Compliance Program Manager a copy (by PDF in an e-mail) of AD-1026C's along with cropland acreage information to communicate eligibility reduction to RMA.--

603 Landlord Exemption – HELC or WC Planting Violation (Continued)

G Example of AD-1026C

The following is an example of AD-1026C.

This form is available electronically. AD-1026C (02-06-12) U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency		Form Approved – OMB No. 0560-0185	
LANDLORD OR LANDOWNER EXEMPTION REQUEST		1A. STATE NAME State	
		1B. COUNTY NAME County	
<p>NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a - as amended). The authority for requesting the information identified on this form is 7 CFR Part 12, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), and the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246). The information will be used to process a landlord or landowner request to receive an exemption for highly erodible land and/or wetland conservation provisions under USDA programs. The information collected on the form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is voluntary. However, failure to furnish the requested information will result in an inability to process a landlord or landowner request to receive an exemption for highly erodible land and/or wetland conservation provisions under USDA programs.</p> <p>According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0185. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.</p>			
PART A – PRODUCER'S INFORMATION			
2. NAME AND ADDRESS OF LANDLORD OR LANDOWNER (Including Zip Code) Ben There 9889 A Street Sometown, State 55555		3. TELEPHONE NO. (Area Code) (555) 555-5555	4. TAX IDENTIFICATION NUMBER (Last 4 Digits) XXXX
		5A. FARM NUMBER 5432	5B. TRACT NUMBER 172
		6. CROP YEAR 2012	7. CROPLAND ACRES 80.0
PART B - LANDLORD OR LANDOWNER CERTIFICATION			
8. I hereby certify that the following information is correct for the farm and tract(s) listed in items 5A and 5B for the crop year entered in item 6: (a) Production of an agricultural commodity on highly erodible land or on converted wetland in violation of the highly erodible land and wetland conservation provisions of the Food Security Act of 1985 as amended is NOT required under the terms of an agreement between myself and the tenant or sharecropper. (b) I did not consent to any activities by the tenant or sharecropper to violate the highly erodible land and wetland conservation provisions of the Food Security Act of 1985 as amended.			
9A. SIGNATURE OF LANDLORD <i>Signature</i>		9B. DATE (MM-DD-YYYY) 2/20/2012	
PART C – TO BE COMPLETED BY COC			
10. Based on the producer certification and available information, the COC determined that: <input type="checkbox"/> A. The landlord exemption shall NOT apply.			
<input checked="" type="checkbox"/> B. The landlord exemption shall apply. (List all land on which the producer will be ineligible for benefits. Determine according to the table in Part D.) FSN 5432			
11. Describe the reasons for the COC determination. (Attach another sheet, if necessary.) The landlord did not instruct the tenant to violate HELC provisions and in fact, encouraged the tenant to use no till methods on his land. The tenant ignored the landlord and violated HELC provisions. The landlord lives in another State and was unaware of the violation until notified of it.			
12A. SIGNATURE OF COC <i>Ima Member</i>		12B. DATE (MM-DD-YYYY)	

604 Tenant HELC Exemption – Landlord Refusal

A HELC Exemption if Violation From Landlord Refusal

Ineligibility of an operator, tenant, or sharecropper may be limited only to the farm on which the violation occurred, if the producer has established to COC's satisfaction that:

- a reasonable conservation plan was obtained for the farm
- the landlord refuses to allow the operator, tenant, or renter to comply with the conservation plan
- the producer made a good faith effort to meet HELC requirements
- lack of compliance is **not** part of a scheme or device to avoid compliance
- the producer is **not** in control of application of the measures necessary to meet compliance.

Note: The exempted producer cannot receive any benefits that are subject to HELC provisions from the violating farm for which a HELC exemption is approved.

*--Tenant HELC exemption provisions for Federal Crop Insurance Participants.

- The premium subsidy shall be reduced rather than a loss of all premium subsidy.
- The percentage reduction will be determined by comparing the total number of cropland acres on the farm where the exemption applies to the total number of cropland acres on all farms in which the tenant (as owner or operator) has an interest.
- The percentage reduction will be applied to all policies and plans of insurance of the tenant in the reinsurance year subsequent to the reinsurance year in which the tenant exemption is determined applicable.
- If the landlord and tenant are insured under the same policy (as determined by RMA), the tenant will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.--*

604 Tenant HELC Exemption – Landlord Refusal (Continued)**B When to Request HELC Exemption**

Producers shall request a HELC exemption when filing AD-1026, if it is known at the time of filing AD-1026 that the landlord will **not** allow compliance with the conservation plan. Exemptions must be applied for yearly on AD-1026B.

COC may accept HELC exemption requests after the producer filed AD-1026, if the producer could **not** reasonably have been expected to know that the landlord would **not** allow compliance with the conservation plan at the time AD-1026 was filed.

Record the COC determination in the COC minutes.

Note: If a HELC exemption is requested, then AD-1026, item 7 shall be answered “Yes”.

C Where to Request HELC Exemption

HELC exemption requests shall be made in the administrative County Office for the farm on which the HELC exemption is requested.

The administrative County Office for the farm where the violation occurred may **not** be the recording County Office for the producer; however, COC in the administrative County Office would be in the best position to make the determination, based on the circumstances surrounding the particular farm.

D Authority for Approval of HELC Exemption

If the landlord refuses to allow application of:

- structural practices, COC in the administrative County Office for the farm for which the request is made is authorized to approve the HELC exemption
- planting practices, STC, upon recommendation by COC, is authorized to approve the HELC exemption.

E Purpose of AD-1026B

AD-1026B has been developed for documenting data required for making HELC exemption determinations.

604 Tenant HELC Exemption – Landlord Refusal (Continued)

G Entries Required on AD-1026B

Complete AD-1026B according to the following table.

Note: Attach additional sheets, with the item numbers identified, if more space is needed for any of these items.

Item	Instruction	Responsibility
1A	Enter State name for administrative County Office location.	FSA County Office or Producer
1B	Enter name of administrative County Office.	
Part A - Producer's Request		
2	Enter producer's name and address, including telephone number.	
3	Enter last 4 digits of producer's tax ID number.	
4	Enter farm number for which exemption is requested.	
5	Enter crop year for which exemption is requested.	
6	Enter cropland acres on the farm for which exemption is requested.	
7	Enter detailed description of the practices that the landlord refuses to allow according to the plan, and the reasons why they will not be applied.	
8A, 8B, and 8C	Producer requesting exemption shall sign, enter title/relationship if applicable, and date.	Producer
9A, 9B, and 9C	Landlord who refuses to allow the required practices according to the conservation plan shall sign, enter title/relationship if applicable, and date. Note: COC may accept the exemption request without the landlord's signature, if a reasonable attempt was made by the producer requesting the exemption to obtain the signature.	Landlord who refuses to apply the conservation plan
10	Enter date AD-1026B is referred to NRCS.	FSA County Office
Part B - To Be Completed by NRCS		
11	Check (✓) NRCS determination of whether the producer obtained a farm plan in a timely manner.	NRCS Representative
12	Enter description of structural measures that are required by the plan that have not been applied.	
13	Enter description of planting practices that are required by the plan.	
14A and 14B	NRCS employee shall sign and date.	

604 Tenant HELC Exemption – Landlord Refusal (Continued)

G Entries Required on AD-1026B (Continued)

Item	Instruction	Responsibility
Part C - To Be Completed by the County Committee		
15	Enter description of the practices that will be considered exempt, and the reasons why.	COC
16	Enter measures that were requested for an exemption, and will not be granted, and the reasons why.	
17	Enter description of the practices recommended for an exemption, and the reasons why. Note: Send AD-1026B and any other pertinent documentation to STC for review.	
18A and 18B	COC shall sign and date.	
19	Enter date referred to the State Office for STC determination, if practices have been entered in item 17.	
Part D - To Be Completed by the State Committee		
20	Enter description of the practices recommended for exemption by COC that STC concurs with, and describe the reasons why.	STC
21	Enter description of the practices recommended for exemption by COC that STC does not concur with, and describe the reasons why.	
22A and 22B	STC shall sign and date. Note: Return AD-1026B to the County Office, after STC signature is obtained.	
23	Enter date AD-1026B is returned to the County Office.	State Office
24	Enter date the producer was notified of the determination. Note: Item 24 shall be completed before the final copy is *--e-mailed by PDF to the State Office.	County Office
25	Enter date the final copy was mailed to the State Office.	
26	Enter date the State Office e-mailed a PDF copy to PECD, C/O National Conservation Compliance Program Manager.--*	State Office

604 Tenant HELC Exemption – Landlord Refusal (Continued)**H Completing AD-1026B, Part A**

The request must describe the specific measures that were **not** or will **not** be applied, and the reasons why.

If the producer signed and dated an exemption request on another sheet of paper, attach to AD-1026B, and ENTER “See Attached” in AD-1026B, item 7.

The producer requesting the exemption shall make an attempt to obtain the landlord’s signature. Document any knowledge of the landlord’s refusal to sign in AD-1026B, item 9.

I Completing AD-1026B, Part B

Keep a copy of AD-1026B in a temporary file, and send the original to NRCS for completing AD-1026B, Part B. Enter the date referred to NRCS in AD-1026B, item 10.

J Completing AD-1026B, Part C

COC shall determine good faith according to the requirements in subparagraph A, and the evidence provided by the producer and NRCS.

Enter the exemption determinations for the specific practices for which an exemption request is made. Practices that are **not** specified must be applied according to the conservation plan.

K Completing AD-1026B, Part D

If COC enters practices in AD-1026B, item 17, for which STC approval for nonstructural practices is recommended, then make a copy of AD-1026B, and mail the original to the State Office. Enter the date referred to the State Office in AD-1026B, item 19.

STC shall make a determination, considering the facts in the case. No practices for which the producer has control of shall be approved for exemption.

The State Office shall enter the date returned to the County Office in AD-1026B, item 23.

604 Tenant HELC Exemption – Landlord Refusal (Continued)**L Notifying Producers of HELC Exemption Determinations**

The County Office where AD-1026B is filed shall notify the producer of the COC determination. The notification shall include the following:

- the precise practices that will be considered exempt
- a statement that all other practices not specifically exempted must be applied as required by the plan
- the reasons why practices that were requested for exemption were **not** approved, if any
- appeal rights.

M Reporting Requirement

The 1985 Act, as amended, requires providing an annual report to Congress on HELC exemptions that have been approved. To fulfill this requirement, when final determinations are made and the producer is notified:

- *--County Offices shall e-mail a PDF copy of AD-1026B to State Offices as soon as approved, and total cropland acreage applicable to the tenant as owner or operator shall be included
- State Offices shall submit a copy of AD-1026B to the National Conservation Compliance Program Manager by e-mail in PDF, as soon as received.--*

Note: State Offices shall maintain a file with a copy of all AD-1026B's sent to PECD.

604 Tenant HELC Exemption – Landlord Refusal (Continued)

N AD-1026B Process

The following table shows the process for filing and notifications for AD-1026B.

IF...	AND...	THEN the State or County Office receiving AD-1026B shall...
a producer requests HELC exemption	AD-1026B, Part A is completed	<ul style="list-style-type: none"> • file a copy in a pending file • provide original AD-1026B to NRCS.
NRCS returns AD-1026B	AD-1026B, Part B is completed by NRCS	<ul style="list-style-type: none"> • destroy copy in the pending file • have COC review the request.
COC documents determination in AD-1026B, Part C	STC determination is not required	<ul style="list-style-type: none"> • notify producer of the determination • provide copy of completed AD-1026B to the State Office • provide copy of AD-1026B to the recording County Office for multi-county producers • attach original AD-1026B to NRCS-CPA-026e • attach copy of AD-1026B to AD-1026. <p>Note: If the County Office receiving AD-1026B is the recording County Office, verify the answer in AD-1026, item 6.</p>
	STC determination is required	<ul style="list-style-type: none"> • file a copy in a pending file • mail original AD-1026B to the State Office.

604 Tenant HELC Exemption – Landlord Refusal (Continued)

N AD-1026B Process (Continued)

IF...	AND...	THEN the State or County Office receiving AD-1026B shall...
County Office receives AD-1026B from the State Office	AD-1026B, Part D is completed	<ul style="list-style-type: none"> • destroy copy in the pending file • notify producer of the determination • provide copy of completed AD-1026B to the State Office • provide copy of AD-1026B to the recording County Office for multi-county producers • attach original AD-1026B to NRCS-CPA-026e.
State Office receives copy of AD-1026B	STC determination is required in AD-1026B, Part D	<ul style="list-style-type: none"> • document STC determination on the bottom of AD-1026 • file a copy in a pending file • mail original to the County Office.
	<ul style="list-style-type: none"> • determination is final • producer has been notified 	<ul style="list-style-type: none"> • destroy pending copy, if previous STC determination was made • copy completed AD-1026B, which is Report PA-124R, and file • *--e-mail to the National Conservation Compliance Program Manager, a copy of AD-1026B Summary Report to PECD on January 10.--*
recording County Office receives copy of AD-1026B	producer has not filed AD-1026	place AD-1026B in the producer’s file to be attached to AD-1026 when it is filed.
	producer has filed AD-1026	attach AD-1026B to AD-1026, and verify the answer in AD-1026, item 6.

O Updating HEL Field for Farm or Tract

If a producer is granted an exemption on AD-1026B, update the HEL field for the farm or tract, as applicable, by selecting “Landlord/Tenant” from the drop-down box according to *--3-CM or 10-CM.--*

606 Notifying Producers of Ineligibility Determinations (Continued)**D Information for Notifying Nonparticipating Producers for Conversion Noncompliance**

Nonparticipating producers who convert wetlands shall be sent a notification that includes the following:

- an explanation of the conversion determination by NRCS, including the following:
 - statement of the program rules that apply in this case
 - facts in this case that resulted in conversion of wetland
- a statement that the conversion will result in future ineligibility for USDA benefits covered by HELC and WC provisions
- affiliated persons who are affected by the conversion activity
- appeal rights according to 1-APP.

E Warehouse Operators

If a producer who receives CCC benefits under UGSA is determined ineligible because of a HELC violation:

- the County Office shall notify the State Office
- the State Office shall notify DAFP through DAFO
- KCCO will subsequently be notified.

Note: WC compliance requirements do **not** apply to warehouse operations.

606 Notifying Producers of Ineligibility Determinations (Continued)**F Difference in Notification of Nonparticipating Producers**

The reason that the notification process for nonparticipating producers for wetland conversions differ from HELC or WC planting violations is:

- conversion of wetland after November 28, 1990, results in ineligibility until the wetland is restored

Note: The wetland must be restored by January 1 to be eligible for benefits for the applicable year.

- planting violations are determined annually, and results in ineligibility only for the crop year for which the violation determination is made.

G Nonparticipating Producers With HELC Noncompliance

A producer shall **not** be notified by FSA of a HELC violation determination until AD-1026 is filed. When the producer has filed AD-1026 to request USDA benefits, the administrative County Office:

- for the land in violation shall follow subparagraph C
- where the producer has requested benefits shall follow paragraph 608.

***--Note:** A producer is considered to have requested benefits for any benefits subject to conservation compliance (including NRCS and RMA).--*

607 Notifying Other County Offices and NRCS of Ineligibility Determinations**A Notifying Other County Offices**

For each producer and affiliate who the County Office notifies that an ineligible determination has been made:

- review the Producer Farm Data Report to determine County Offices associated with the producer
- send a copy of the ineligibility notification to each County Office listed on the producer's Producer Farm Data Report.

B Notifying NRCS

Each County Office that receives a copy of a letter stating that a producer has been determined ineligible, shall notify the local NRCS office within 15 calendar days after receiving the letter, in writing, that the producer has been determined ineligible for program benefits because of HELC or WC violations.

608 County Offices Receiving Copies of Producer Ineligibility Notifications**A Administrative County Office Receives Copy**

Each County Office with administrative responsibilities for a farm in which an ineligible producer has an interest will receive a copy of the producer's letter of ineligibility.

B Administrative County Office Action

The administrative County Office for an ineligible producer shall:

- determine specific program benefits requested or received that shall be denied
- notify the producer of the determination
- request refunds according to 58-FI
- ensure that benefits are **not** issued to producers who violated in another county.

608 County Offices Receiving Copies of Producer Ineligibility Notifications (Continued)**C Producer Appeals**

Producers must file their appeal in the County Office that maintains their producer eligibility records. COC that made the producer's ineligibility determination shall be responsible for making a determination about the producer's appeal. Appeal procedures shall be followed according to 1-APP.

Note: After producer appeal rights have been exhausted or a final determination is made, *-update the eligibility file according to 3-PL (Rev. 2) and farm records according to 3-CM or 10-CM.

609 Reinstatement of Eligibility Following HELC and WC Violations**A Applicability**

This paragraph is applicable to producers who did **not** receive a Good Faith Relief exemption or any other exemption that allowed the retention of program benefits for the year of the HELC or WC violation.

B Requirements for Eligibility Reinstatement

For reinstatement of eligibility in a year following a HELC or WC violation, a producer must:

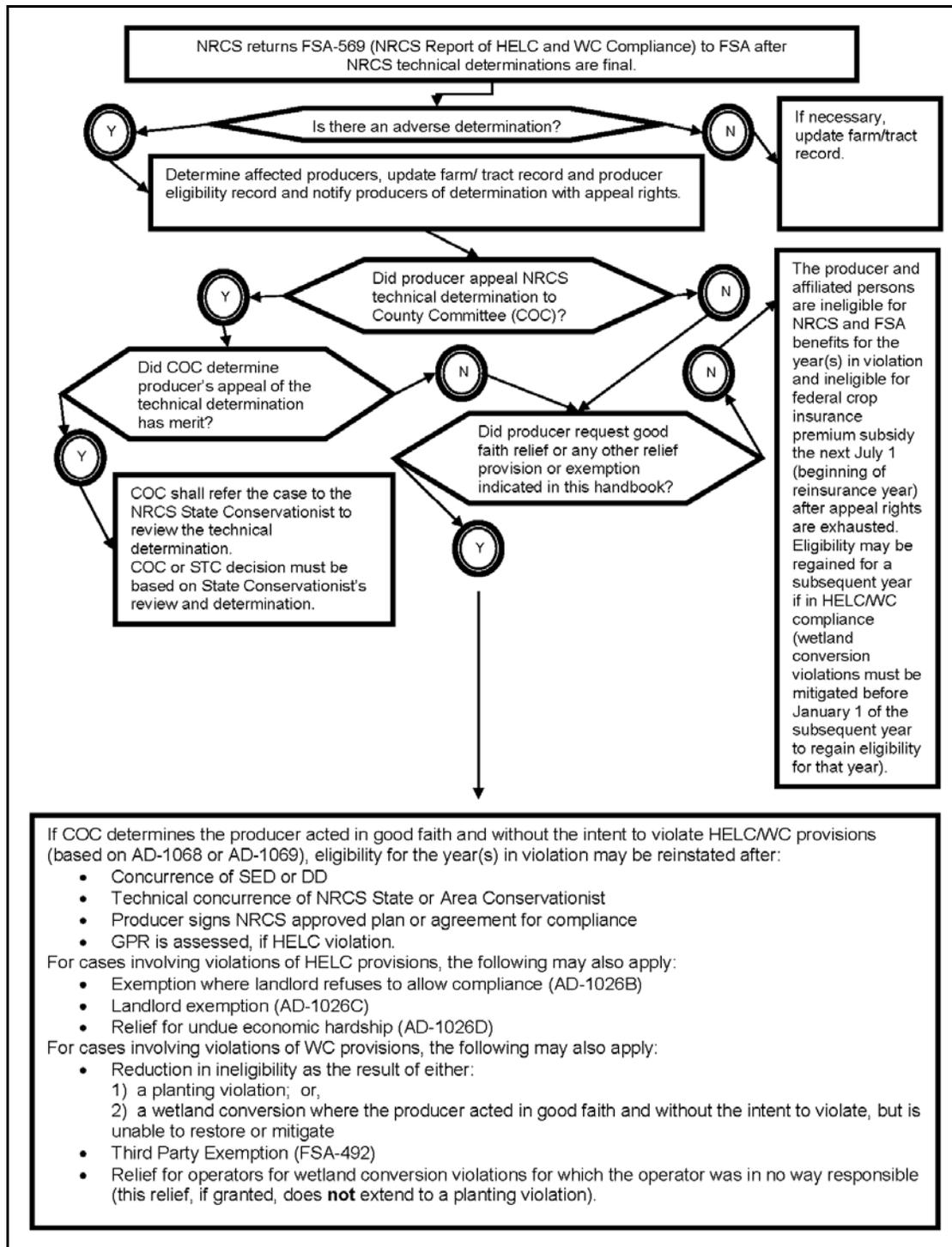
- certify HELC and WC compliance on a new AD-1026
- be reviewed by NRCS and determined to be in compliance with HELC or WC--* provisions for the applicable year.

To ensure that these requirements are met, the County Office shall provide FSA-569 to NRCS when a producer requests program benefits and certifies compliance on a new AD-1026.

610 Process for HELC or WC Violations

A Process Overview

The following flowchart provides an overview of the process for HELC or WC violations.



--611 Tenant/Sharecropper Exemption (Planting Violation on Converted Wetland \geq 2014)*A Converted Wetland Planting Violation Exemption to the Federal Crop Insurance Subsidy**

Violations from planting on converted wetlands determined CW \geq 2014 result in ineligibility to the reinsured crop insurance subsidy the next reinsurance year after all administrative appeals are exhausted. Tenant/sharecroppers may have this ineligibility reduced if the producer has established to COC's satisfaction that:

- the producer met good faith requirements for WC requirements
- the producer is **not** in control of application of the measures (restoration/mitigation) necessary to meet compliance
- the landlord refuses to allow the operator, tenant, sharecropper, or renter to comply with the restoration/mitigation requirement to meet WC good faith provisions
- lack of compliance is **not** part of scheme or device to avoid compliance.

B When to Request Tenant/Sharecropper Exemption

Federal Crop Insurance participants that are tenants or sharecroppers on the land in violation of planting a converted wetland (CW \geq 14), meeting the parameters of subparagraph A, may request this exemption after administrative appeals have been exhausted for reduction in ineligibility of the reinsured crop insurance subsidy benefit.

Note: The reduction of ineligibility of FSA benefits according to paragraphs 637 and 638 does not apply to the reinsured crop insurance subsidy benefit. Therefore, the tenant/sharecropper exemption must be requested, if applicable, to reinstate eligibility for partial subsidy benefit.

C Purpose of AD-1026E

AD-1026E shall be used for documenting all tenant/sharecropper exemptions:

- certifications of eligibility of producers
- determinations by COC.--*

***--611 Tenant/Sharecropper Exemption (Planting Violation on Converted Wetland \geq 2014)
(Continued)**

D Where to File AD-1026E

AD-1026E shall be filed by the tenant/sharecropper in the administrative County Office for the farm on which the violation occurs.

The administrative County Office for the farm where the violation occurred may **not** be the recording County Office for the producer; however, the COC in the administrative County Office would be in the best position to make the determination, based on the circumstances surrounding the particular farm.

Administrative county shall provide a copy of all approved AD-1026E's to the State Conservation Compliance Specialist as approved. State Conservation Specialists shall provide a copy (e-mail and PDF) of all approved AD-1026E's to the National Conservation Compliance Program Manager so exemptions can be reported to RMA.--*

***--611 Tenant/Sharecropper Exemption (Planting Violation on Converted Wetland ≥ 2014) (Continued)**

E Example of AD-1026E

Following is an example of AD-1026E.

<p>This form is available electronically.</p> <p>AD-1026E (07-13-16)</p> <p>U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency</p> <p>TENANT/SHARECROPPER EXEMPTION FOR WETLAND PLANTING VIOLATION ON CW ≥ 2014</p>			<p>1A. STATE NAME</p> <p>State</p>
			<p>1B. COUNTY NAME</p> <p>County</p>
<p>NOTE: <i>The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a - as amended). The authority for requesting the information identified on this form is 7 CFR Part 12, the Food Security Act of 1985 (Pub. L. 99-198), and the Agricultural Act of 2014 (Pub. L. 113-79). The information will be used to process a producer request to receive an exemption for wetland planting violation conservation provisions under USDA programs. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of producer ineligibility to participate in and receive benefits under a USDA conservation program.</i></p> <p><i>This information collection is exempted from the Paperwork Reduction Act as specified in the Agricultural Act of 2014 (Pub. L. 113-79, Title II, Subtitle G, Funding and Administration). The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. RETURN THIS COMPLETED FORM AD-1026E TO YOUR COUNTY FARM SERVICE AGENCY (FSA) OFFICE.</i></p>			
<p>PART A – PRODUCER’S INFORMATION</p>			
<p>2. NAME AND ADDRESS OF TENANT/SHARECROPPER (Including Zip Code)</p> <p>Producer Name 1234 56th Street Anytown, State 00000</p>	<p>3. TELEPHONE NUMBER (Area Code) 000-000-0000</p>	<p>4. TAX ID NUMBER (Last 4) XXXX</p>	
	<p>5A. FARM NUMBER 1234</p>	<p>5B. TRACT NUMBER 1234</p>	
	<p>6. CROP YEAR 2016</p>	<p>7A. CROPLAND ACRES 100</p>	
	<p>7B. TOTAL CROPLAND ACRES 1000</p>	<p>7C. PERCENT REDUCED 10 %</p>	
<p>PART B – TENANT OR SHARECROPPER’S CERTIFICATION</p>			
<p>8. I hereby certify that the following information is correct for the farm and tract(s) listed in Items 5A and 5B for the crop year entered in Item 6:</p> <p>(a) I was not aware the acreage planted was a converted wetland. (b) A good-faith effort was made to comply by developing a plan, approved by NRCS, for the restoration for mitigation of the converted wetland, however the landowner refuses to comply. (c) The planting of the converted wetland was not a scheme and device between myself and the landowner or landlord. (d) I will no longer plant the acreage identified as CW ≥ 2014.</p>			
<p>9A. SIGNATURE OF TENANT OR SHARECROPPER</p>	<p>9B. TITLE/RELATIONSHIP OF THE INDIVIDUAL SIGNING IN A REPRESENTATIVE CAPACITY</p>	<p>9C. DATE (MM-DD-YYYY)</p>	
<p>PART C – TO BE COMPLETED BY COC</p>			
<p>10. BASED ON THE PRODUCER CERTIFICATION AND AVAILABLE INFORMATION, THE COC DETERMINED THAT (Describe Reason in Item 11):</p> <p><input type="checkbox"/> A. The tenant/sharecropper exemption shall NOT apply.</p> <p><input checked="" type="checkbox"/> B. The tenant/sharecropper exemption shall apply. (See Part D for “Rules for Applying Tenant/Sharecropper Ineligibility”.)</p>			
<p>11. DESCRIBE THE REASONS FOR THE COC DETERMINATION. (Additional space in Part E)</p> <p>Producer began operating Tract 1234 in 2016. They were not aware of CW+2014 and inadvertently planted the acreage determined converted wetland. Producer is not able to meet good faith requirement of restoration because the owner is not willing to allow the restoration.</p>			
<p>12A. SIGNATURE OF COC</p>			<p>12B. DATE (MM-DD-YYYY)</p>
<p><small>In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.</small></p> <p><small>Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, 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.</small></p> <p><small>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. USDA is an equal opportunity provider, employer, and lender.</small></p>			

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***--611 Tenant/Sharecropper Exemption (Planting Violation on Converted Wetland ≥ 2014)
(Continued)**

E Example of AD-1026E (Continued)

AD-1026E (07-13-16)		Page 2 of 2
PART D – RULES FOR APPLYING TENANT/SHARECROPPER INELIGIBILITY		
13. IF ITEM 10B IS CHECKED, USE THIS TABLE TO DETERMINE PRODUCER INELIGIBILITY FOR REINSURED CROP INSURANCE PREMIUM SUBSIDY.		
IF the producer's status on the violating farm is...	AND if the crop planted on the land with the violation.....	THEN the....
tenant or sharecropper, who is operator	is cash rented or shared	tenant shall be ineligible for all premium subsidies in proportion to the percentage reduction figured in 7. If the landowner and tenant or sharecropper are insured under the same policy (as determined by RMA), the tenant or sharecropper will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.
landlord	is shared	landlord shall be ineligible for all premium subsidies.
landlord	is cash rented	landlord is not held responsible for the planting violation (their eligibility/ineligibility hinges on the conversion).
PART E – TO BE COMPLETED BY COC (Continued from Page 1, Part C)		
14. DESCRIBE THE REASONS FOR THE COC DETERMINATION. (If necessary, attach additional sheet and check this box <input type="checkbox"/>).		
15A. SIGNATURE OF COC		15B. DATE (MM-DD-YYYY)

--*

***--611 Tenant/Sharecropper Exemption (Planting Violation on Converted Wetland ≥ 2014)**
(Continued)

F Entries Required on AD-1206E

Complete AD-1026E according to the following table.

Item	Instructions	Responsibility	
1A	Enter State name and code.	County Office and Producer	
1B	Enter county name and code.		
Part A – Producer’s Information			
2	Enter producer’s name and address		
3	Enter producer’s telephone number.		
4	Enter last 4 digits of producer’s tax ID number.		
5A	Enter farm number on which the tenant or sharecropper has planting violation.		
5B	Enter tract number on which the tenant or sharecropper has planting violation.		
6	Enter crop year of the violation.		
7A	Enter cropland acres of the farm in 5A.		
7B	Enter all cropland acres the tenant or sharecropper has interest in as owner or operator.		
7C	Divide 7A/7B to determine percentage reduction. Example: 7A = 100 acres, 7B = 1000 acres, percentage reduction = 10%		
Part B Tenant or Sharecropper’s Certification			Tenant or Sharecropper
9A 9B 9C	Tenant, sharecropper, or representative who is requesting an exemption shall sign and date.		
Part C – To Be Completed by COC			
10A	Check if COC has determined that the producer’s certification is not valid.	COC	
10B	Check if COC has reason to believe the producer’s certification is valid.		
11	Enter reason the request was approved or disapproved.		
12A and 12B	COC shall sign and date.		

612-615 (Reserved)

Subsection 1 Good Faith Relief for HELC Violations

621 Good Faith Relief Provisions and Requests – HELC

A Good Faith Relief Provisions

A producer who is determined ineligible as the result of a violation of HELC provisions may regain eligibility for the crop year in violation if all of the following conditions are met:

- the producer requests good faith relief using AD-1068
- COC determines that the producer acted in good faith and without intent to violate HELC provisions

Note: If COC does **not** approve the producer's request for good faith relief, the producer shall be notified according to 1-APP.

- SED, or DD if authority is delegated, reviews and concurs with COC's determination
- State Conservationist, or Area Conservationist if authority is delegated, provides technical concurrence based on a review of the proposed conservation plan and the factors used to determine GPR
- the producer agrees to implement the practices according to a conservation plan within an agreed period determined by NRCS, **not** to exceed 1 year
- GPR is assessed according to subparagraphs E and F.

***--Note:** If NRCS determines the producer failed to implement practices within 1 year or the producer does not pay assessed GPR according to subparagraph J, notify producer that the good faith is rescinded and request a refund of benefits reinstated.--*

B Making a Request for Good Faith Relief

Requests for a good faith determination for HELC violations shall be made, in writing, by each producer who wants to regain eligibility for benefits that were or may be denied as the result of HELC violation or potential violation. The request shall include the following:

- circumstances surrounding the violation or potential violation
- any evidence indicating the activity was conducted in good faith, and **not** as a scheme or device to avoid compliance.

Note: Do either of the following:

- attach the producer's signed and dated request to AD-1068 for processing
- have the producer write the request on AD-1068.

621 Good Faith Relief Provisions and Requests – HELC (Continued)**C Where to Make a Good Faith Relief Request**

Producer shall file a good faith relief request with COC for the county where the farm with the HELC violation is located for program administration purposes.

D Information Required From NRCS for Determining Good Faith

NRCS shall provide the following information to COC on AD-1068 for making a determination:

- any facts about the case that may affect the COC determination
- copies of documents containing pertinent information about the case, such as NRCS notification to the producer about their determination
- whether the producer obtained or attempted to obtain a conservation plan for the land in a timely manner
- whether there was any face-to-face discussion with the producer concerning the violation
- whether the landlord attempted to work with NRCS in developing a conservation plan that could be actively applied by the producer
- information about the violation and the erodibility index of each field in violation
- characteristics of the field and whether the producer should have known that the field was HEL and/or was subject to gully erosion
- whether the participant had been provided a previous determination and/or conservation plan, and made a good faith effort to comply
- whether there is evidence of intent to violate HELC provisions.

621 Good Faith Relief Provisions and Requests – HELC (Continued)

E GPR Calculation

The GPR amount calculated according to this paragraph reflects the amount of reduction in benefits determined to be commensurate with the seriousness of the HELC violation.

***--GPR for Sheet and Rill or Wind Erosion:** The GPR amount for sheet and rill or wind--* erosion shall be calculated by multiplying the applicable acres in violation times the dollar amount determined according to the following table, subject to any applicable adjustments indicated in subparagraph F.

GPR Amount per Acre for Sheet and Rill Erosion				
Erodibility Index	Actual Soil Loss (Multiple of T)			
	<3T	3T – 3.9T	4T – 4.9T	5T+
8.0 – 8.9	\$13	\$25	\$38	\$50
9.0 – 11.9	\$25	\$50	\$75	\$100
12.0 – 14.9	\$50	\$100	\$150	\$200
15.0 – 19.9	\$75	\$150	\$225	\$300
20.0 – 24.9	\$100	\$200	\$300	\$400
25.0+	\$125	\$250	\$375	\$500

GPR for Gully Erosion: The GPR amount for gully erosion shall be \$1,000 per field, subject to any applicable adjustments indicated in subparagraph F.

Note: NRCS determines the type of erosion, erodibility index, actual soil loss, and acres or *--fields in violation of HELC provisions. Fields with both sheet and rill or wind--* erosion **and** gully erosion shall have GPR based upon the higher of the 2 methods.

F Adjustments to Calculated GPR

The GPR amount calculated according to subparagraph E shall be adjusted as follows.

IF the calculated GPR amount is...	THEN the assessed GPR amount shall be...
less than \$1,000	a minimum of \$1,000, unless NRCS determines the HELC violation to be technical in nature with a minimal effect on the erosion control purposes of the conservation plan applicable to the land on which the violation occurred.
for a HELC violation NRCS determines to be technical in nature with a minimal effect on the erosion control purposes of the conservation plan applicable to the land on which the violation occurred	\$0. Note: A good faith determination is not necessary to retain program benefits for HELC violations NRCS determines to be technical and minor in nature.

621 Good Faith Relief Provisions and Requests – HELC (Continued)

F Adjustments to Calculated GPR (Continued)

IF the calculated GPR amount is...	THEN the assessed GPR amount shall be...
greater than \$10,000	a maximum of \$10,000, unless NRCS determines the HELC violation is on land that has been converted from native vegetation, such as rangeland or woodland, to crop production after December 23, 1985.
for a HELC violation on land NRCS determines to have been converted from native vegetation, such as rangeland or woodland, to crop production after December 23, 1985	increased by 20 percent to a maximum of \$12,000.

Note: When multiple persons are affected by a HELC violation, prorate GPR’s according to paragraph 623.

G Determining Acres in Violation

The acres in violation shall be the total acreage in the HEL field on which the conservation system was **not** applied, unless both of the following apply:

- the producer provides information to COC that shows that the entire field was **not** in violation
- NRCS can delineate the area of the field on which the HELC violation occurred.

H Application of GPR’s

GPR amounts determined according to this subsection shall:

- apply only for violations on HEL
- apply in addition to any other program payment reductions that are applicable
- apply to **all** USDA benefits that are subject to HELC and WC provisions earned for the crop year of the violation determination

***--Note:** This includes MAL’s, NRCS and RMA benefits. Farm loans are only included if the loan contributed to the HELC violation.--*

621 Good Faith Relief Provisions and Requests – HELC (Continued)**H Application of GPR's (Continued)**

- **not** apply to USDA benefits earned for crop years before or later than the crop year of the violation determination.

Example: Producer A fails to comply with HELC provisions on HEL for the 2011 crop year. GPR of \$5,000 is determined for the producer according to this subsection. If the total 2011 crop year earnings for the producer is \$3,000:

- the producer would **not** receive 2011 benefits
- the \$2,000 difference in the amount of GPR and benefits earned for the 2011 crop year cannot be deducted from benefits earned for crop years that are before or later than the 2011 crop year.

I Documentation and Notifications for Good Faith Determinations

The facts about the request for good faith relief and all pertinent details that led to COC's conclusion when making the determination shall be:

- documented in AD-1068, item 18
- included in a notification to the producer about the decision.

Approvals must be supported by conclusive evidence to indicate that the producer acted in good faith without intent to violate and the action was **not** a scheme or device to avoid compliance.

Disapprovals must have documentation to support a conclusion that there is **not** sufficient evidence that the producer intended to comply.

621 Good Faith Relief Provisions and Requests – HELC (Continued)

J Assessing GPR’s

As discussed in subparagraph H all applicable benefits are applicable to GPR to the crop year of the violation, at the time GPR is assessed.

Step	IF...	THEN...
1	the producer received FSA benefits and those benefits to the applicable year fully meet the GPR	issue demand letter and collect repayment from the producer for GPR amount or use applicable program code to offset any payments not yet made. No further action is required.
2	the producer did not receive FSA benefits or those benefits to the applicable year do not fully satisfy the GPR	contact NRCS to determine NRCS benefits applicable to subparagraph H.
3	NRCS benefits (solely or in combination with FSA benefits) fully meet the GPR	issue demand letter and collect repayment for the amount of the GPR from the producer. No further action is required.
4	FSA and NRCS benefits do not fully satisfy GPR, or there are not any FSA or NRCS benefits to the applicable crop year	research the producer in CIMS to determine if the producer is a Federal Crop Insurance participant.
5	the producer is a Federal Crop Insurance participant	the applicable State Office will contact the National Office to get an RMA determination of the amount of federally reinsured crop insurance subsidies for the applicable crop year.
6	the federally reinsured crop insurance subsidy will fully satisfy the GPR (solely or in combination of FSA and/or NRCS benefits)	issue demand letter and collect repayment for the amount of the GPR from the producer. No further action is required.
7	the producer is not a Federal Crop Insurance participant, or the federally reinsured crop insurance subsidy (solely or in combination with FSA and NRCS benefits) do not fully satisfy the GPR	at the time ARC/PLC payments are made determine if producer will receive one.
8	the producer will be issued an ARC/PLC payment	use the applicable program code to offset that payment up to the amount not to exceed the full amount of satisfying the GPR.
9	there will not be any ARC/PLC payments, or the ARC/PLC payments do not fully satisfy the GPR	obligation has been met according to the last bullet of subparagraph H. Monitor any future disaster payments made to the applicable crop year.

Use applicable FI handbooks to assess GPR’s with the nonautomated program code of XXGPR (including payments received for NRCS and RMA benefits if applicable).--*

Note: Substitute “XX” with the applicable year.

621 Good Faith Relief Provisions and Requests – HELC (Continued)

K Adverse Determinations

If SED or DD does **not** approve the good faith determination, the producer shall be provided appeal rights to NAD according to 1-APP.

If the NRCS State or Area Conservationist does **not** provide technical concurrence, the conservation plan and the determination of applicable GPR factors shall be returned to the District Conservationist for technical corrections.

622 Using AD-1068

A Purpose of AD-1068

AD-1068, together with any supporting attachment, is used to document the following:

- producer's request for a good faith determination and relief from ineligibility resulting from a violation of HELC provisions
- action taken on the producer's request by COC and reasons for COC's determination
- action taken by SED or DD and NRCS relating to the producer's violation and request for good faith relief
- GPR amount if good faith relief is approved for a HELC violation.

Subsection 2 Good Faith Relief for WC Violations

631 Good Faith Relief Provisions and Requests – WC

A Good Faith Relief Provisions

A producer who is determined ineligible as the result of a violation of WC provisions may regain eligibility for the crop year in violation if **all** of the following conditions are met:

- the producer requests good faith relief using AD-1069
- COC determines that the producer acted in good faith and without intent to violate WC provisions
- SED, or DD if authority is delegated, reviews and concurs with COC's determination
- State Conservationist, or Area Conservationist if authority is delegated, provides technical concurrence based on a review of the proposed mitigation plan
- the producer agrees to implement the measures and practices necessary to be considered to be actively restoring the subject wetland within an agreed period determined by NRCS, *--not to exceed 1 year for FSA and NRCS benefits and 2 reinsurance years for the federal crop insurance premium subsidy.--*

No payment reduction shall apply for producers who meet the good faith relief requirements for a WC violation.

Note: See paragraph 637 for reducing the payment ineligibility for producers who are unable to restore or mitigate the converted wetland, but acted in good faith without the intent to violate WC provisions.

B Requests for Good Faith Relief

Requests for good faith relief for WC violations shall be made, in writing, by the producer. The request shall include the following:

- the circumstances surrounding the violation
- any evidence indicating that the violation was in good faith and without intent to violate WC provisions, and **not** as a scheme or device to avoid compliance.

Note: Either have the producer provide the request in AD-1069, Part A or attach the producer's request to AD-1069 for processing.

631 Good Faith Relief Provisions and Requests – WC (Continued)**C Where to Make a Good Faith Relief Request**

Producers shall file good faith relief requests with COC for the county where the farm with the WC violation is located for program administration purposes.

D Information Required From NRCS and SWCD for Determining Good Faith

NRCS shall provide the following information to COC on AD-1069 for making a determination:

- any facts about the case that NRCS or SWCD has that may affect COC's determination
- copies of documents containing pertinent information about the case that provide facts and details that may affect COC's good faith decision, such as NRCS' notification to the producer about their determination
- whether the producer was officially informed of the wetland determination made by NRCS
- whether there was any face-to-face discussion with the producer about the wetland, before the violation occurred
- whether NRCS has knowledge that the producer was involved in a previous WC issue
- characteristics of the site before the conversion occurred.

E Making Good Faith Determinations

COC shall determine whether the producer acted in good faith and without intent to violate WC provisions, based on information:

- provided by the producer
- provided by NRCS on AD-1069
- COC may have concerning the circumstances in the case.

F Adverse Determinations

If SED or DD does **not** approve the good faith determination, the producer shall be provided appeal rights * * * according to 1-APP.

If the NRCS State or Area Conservationist does **not** provide technical concurrence, the mitigation plan shall be returned to the District Conservationist for technical corrections.

Subsection 3 Reduction in Ineligibility for WC Violations**637 Restrictions on Relief to Reduce Ineligibility****A When Relief May be Appropriate**

Relief from total ineligibility as a result of a WC violation may be appropriate if a producer planted an agricultural commodity on a converted wetland, but is unable to receive relief under the Good Faith Relief exemption.

Example: An operator who planted an agricultural commodity on a converted wetland is determined to have acted in good faith and without the intent to violate WC provisions, but is unable to restore or mitigate the converted wetland.

In these cases, 7 CFR 12.4(c) provides that, instead of the loss of all benefits for the crop year in violation of WC planting provisions, ineligibility may be reduced based on the seriousness of the violation, as determined by DAFP. If relief is approved under this provision, ineligibility is reduced, **not** waived.

Relief under the provisions of this subsection will **not** be authorized for wetland conversions or if either of the following situations involving a producer who planted a converted wetland apply:

- producer did **not** act in good faith and without the intent to violate WC planting provisions
- producer is able to restore or mitigate the converted wetland, but is unwilling to do so.

***--Note:** Reduction in ineligibility is applicable to NRCS and FSA benefits. Tenant reduction in ineligibility may also apply to the Federal Crop Insurance subsidy benefit, see paragraph 611.--*

637 Restrictions on Relief to Reduce Ineligibility (Continued)**B Factors for Relief Consideration**

Relevant factors, such as the following, shall be considered in determining whether relief is appropriate and the appropriate amount to reduce ineligibility.

- Did the producer act in good faith and without the intent to violate WC provisions?

* * *

- What information was available to the producer before the violation?
- What are the previous land use patterns?
- Are there previous WC violations or other local, State, or Federal wetland violations?

* * *

- What impact would a reduction in payments have on the producer's ability to repay a USDA farm loan?
- Would taking away certain benefits defeat the purposes of encouraging good conservation of soil and water resources?

638 Requesting Relief to Reduce Ineligibility**A Request for a Reduction in Ineligibility**

--Persons whose appeal rights are expired for planting an agricultural commodity on a converted wetland based on a determination of ineligibility with regard to the producer-- ineligibility determination and good faith relief request, if applicable, may request a reduction in ineligibility instead of the loss of all benefits subject to WC provisions.

The person shall have been provided with all opportunities available for appeal of the producer ineligibility determination and good faith consideration before a request for reduction in benefits instead of loss of all benefits is considered by COC.

COC may consider a request for relief from WC ineligibility from persons who do **not** exercise appeal rights or request good faith after the deadline for filing an appeal of the ineligibility determination is expired and the decision is final.

Note: Relief for an operator of a farm with a WC violation may be requested according to subparagraph 602 C.

Section 3 Updating Producer Eligibility Record

641 Producer Eligibility File

A Accessing Producer's Eligibility Record

County Offices shall follow the procedure in:

- *--3-CM or 10-CM to update tract data--*
- 3-PL (Rev. 2) to access and update producer eligibility records.

Producer eligibility is based upon the following:

- certification of compliance on AD-1026
- summarization of HELC, converted wetland, and planted converted wetland exemptions in farm records.

B Producer AD-1026 Certification

To be eligible for certain USDA program benefits, a producer must certify compliance on AD-1026. Record the producer's certification in the eligibility file according to 3-PL (Rev. 2).

C Tract Data

Producer eligibility for conservation compliance purposes is also based upon the data recorded within the web-based system for all tracts associated with the producer. NRCS *--HELC/WC tract determinations are recorded according to 3-CM or 10-CM.--*

The eligibility record for an individual producer reflects the overall status for HELC and WC compliance.

Example: The eligibility record for a producer will be automatically updated as "Not Compliant" if the producer is associated with at least one HEL tract that is in violation of the conservation compliance provisions. The producer will be ineligible for USDA program payments even though other tracts associated with the producer are in compliance.

641 Producer Eligibility File (Continued)

***--D Establishing Farm Records and Producer Information in Business Partner**

Producers that are not currently in farm records, and check either box A or B on AD-1026, Part 5, do not need to have farm records established. Load these producers in Business Partner. An eligibility record is automatically created when the producer is loaded in Business Partner. Update the eligibility record to show AD-1026 has been filed. If these producers subsequently apply to participate in FSA or NRCS programs, farm records would need to be established at that time.

Note: Use AD-2047 according to 1-CM, paragraph 198 to collect producer information for producers who need a record established in Business Partner--*

642-699 (Reserved)

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

This table lists the required reports in this handbook.

Report Control Number	Title	Reporting Period	Submission Date	Negative Report	Reference
PA-124R (AD-1026B)	Highly Erodible Land Exemption Request	Prior Crop Year	January 10	Yes	604

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification	306	Text
AD-1026 Appendix	Appendix to Form AD-1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification	328	303, 304, 306
AD-1026B	Highly Erodible Land Conservation Exemption Request	604	306, 703
AD-1026C	Landlord or Landowner Exemption Request	603	306, 602
AD-1026D	Relief for Undue Economic Hardship Request Highly Erodible Land Conservation	204	
AD-1068	Request for Good Faith Relief – Highly Erodible Land Conservation (HELC) Violation	622	616, 621, 623, 702, 703
AD-1068A	Distribution of Graduated Payment Reduction (GPR) (Supplemental to AD-1068)	623	616
AD-1069	Request for Good Faith Relief – Wetland Conservation (WC) Violation	632	616, 631, 703
CCC-901	Members Information Agricultural Act of 2014		339
CCC-902	Farm Operating Plan for Payment Eligibility 2009 and Subsequent Program Years		339
FSA-156EZ	Abbreviated 156 Farm Record and Tract Listing		439
FSA-321	Finality Rule and Equitable Relief		340
FSA-492	Data Needed for Third-Party Determinations	220	219
FSA-493	Highly Erodible Land Conservation/Wetland Conservation Violation Data	702	700, 701, 703, 750
FSA-569	NRCS Report of HELC and WC Compliance	502	Text
FSA-577	Report of Supervisory Check		17
NRCS-CPA-026	Highly Erodible Land and Wetland Conservation Determination		400, 402, 422
NRCS-CPA-026e	Highly Erodible Land and Wetland Conservation Determination	400	202, 232, 233, 356, 357, 402, 604
NRCS-CPA-027	Certification of Highly Erodible Land Conservation Plan(s) and System(s)		400-402

Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
1985 Act	Food Security Act of 1985	1, 2, 200, 210, 300, 604
AIP	approved insurance provider	336, 341
AW	artificial wetland	212, 226, 421, 422, Ex. 2
CD	Conservation District	19, 200, 203, Ex. 2
CIMS	Comprehensive Information Management System	336, 621
CW	converted wetland (converted after December 23, 1985)	210, 218, 421, 502, 633, 701, 702, Ex. 2
FW	farmed wetland	210, 226, 227, 421, 422, Ex. 2
FWP	farmed wetland pasture	226, 227, 421, Ex. 2
GPR	graduated payment reduction	616, 621-623, 702
MW	minimal effect wetland	212, 213, 218, 421, Ex. 2
NHEL	not highly erodible land	201, 202, 400, 421
NW	nonwetland	212, 421
OO	owner and operator	702
OP	operator	702
OT	tenant or sharecropper	702
OW	owner	702
PC	prior converted wetland (converted before December 23, 1985)	210, 226, 421, 422, Ex. 2
SBI	substantial benefit interest	302, 340, 341
SWCD	Soil and Water Conservation District	204, 622, 631, 632
W	wetland	Text, Ex. 2

Delegations of Authority

None