



### Highly Erodible Land Conservation and Wetland Conservation Compliance

#### OVERVIEW

Highly Erodible Land Conservation (HELCS) and Wetland Conservation (WC) provisions aim to reduce soil loss on erosion-prone lands and to protect wetlands for the multiple benefits they provide. HELCS and WC provisions apply to all land owned or farmed that is considered highly erodible or a wetland, unless USDA determines an exemption applies. The regulations covering these provisions are set forth in the Code of Federal Regulations at 7 CFR Part 12.

Producers, and any individual or entity considered to be an affiliated person of the producer, who participate in most programs administered by the Farm Service Agency (FSA), the Natural Resources Conservation Service (NRCS), and the Risk Management Agency (RMA) are required to comply with these provisions. Non-compliance may affect the following types of USDA program benefits:

- FSA loans and disaster assistance payments
- NRCS and FSA conservation program benefits
- Federal crop insurance premium subsidies

#### COMPLIANCE WITH HELCS AND WC PROVISIONS

To be in compliance with the HELCS and WC provisions, producers must fill out and sign form AD-1026 by June 1, 2015, certifying they will not:

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

Producers planning to remove fence rows, convert woodlots to cropland, combine fields, divide a field into two or more fields, or conduct drainage

activities that have not been previously evaluated by NRCS such as installing, improving or modifying new or existing drainage systems, must notify FSA by filing form AD-1026 detailing these types of planned or completed activities. FSA will notify NRCS, and NRCS will then provide highly erodible land or wetland technical evaluations and issue determinations if needed.

A copy of form AD-1026 can be found at this link: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/AD1026.PDF>

#### HIGHLY ERODIBLE LAND

Highly erodible land is any land that can erode at excessive rates. This is defined as having an erodibility index of eight or more. Highly erodible fields are fields where either:

- 33.33 percent or more of the total field acreage is identified as soil map units that are highly erodible, or
- 50 or more acres in such field are identified as soil map units that are highly erodible.

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

#### WETLAND

A wetland is an area that:

- Has a predominance of hydric soils (wet soils);
- Is inundated or saturated by surface or ground-

water (hydrology) at a frequency and duration sufficient to support a prevalence of hydrophytic (water tolerant) vegetation typically adapted for life in saturated soil conditions; and

- Under normal circumstances supports a prevalence of such vegetation except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

## **AGRICULTURAL COMMODITY**

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

## **NRCS AND FSA ROLES IN MAKING DETERMINATIONS**

When making HELC and WC compliance determinations:

- NRCS makes technical determinations that include:
  - o For HELC compliance
    1. Whether land is considered highly erodible;
    2. Establishing conservation plans and systems; and
    3. Whether highly erodible land is being farmed in accordance with a conservation plan or system approved by NRCS.
  - o For WC compliance:
    1. Whether land is a wetland and if certain technical exemptions apply, such as prior converted; and
    2. Whether a wetland conversion has occurred.
- FSA makes eligibility determinations, such as who is ineligible based upon NRCS technical determinations of HELC or WC non-compliance. FSA also acts on requests for the application of certain eligibility exemptions, such as the good faith relief exemption.

## **HIGHLY ERODIBLE LAND AND WETLAND IDENTIFICATION**

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

## **HELC AND WC NON-COMPLIANCE – FSA AND NRCS PROGRAMS**

Producers who are not in compliance with HELC and WC provisions are not eligible to receive benefits for most programs administered by FSA and NRCS. If a producer received program benefits and is later found to be non-compliant, the producer may be required to refund all benefits received and/or may be assessed a penalty.

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

A producer who violates HELC or WC provisions is ineligible for applicable FSA and NRCS benefits for the year(s) in violation. A planting violation, whether on highly erodible land or a converted wetland, results in ineligibility for benefits for the year(s) when the planting occurred. A wetland conversion violation results in ineligibility

beginning with the year in which the conversion occurred and continuing for subsequent years, unless the converted wetland is restored or mitigated before January 1 of the subsequent year.

### **HELIC AND WC NON-COMPLIANCE – RISK MANAGEMENT AGENCY – POLICIES REINSURED BY THE FEDERAL CROP INSURANCE CORPORATION**

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

- Has not filed an accurately completed AD-1026 with FSA certifying compliance with HELIC and WC provisions; or
- Is not in compliance with HELIC and WC provisions. Unless specific exemptions apply, a producer must:
  - Be in compliance with a NRCS-approved conservation plan for all highly erodible land;
  - Not plant or produce an agricultural commodity on a wetland converted after Feb. 7, 2014; and
  - Not have converted a wetland making the production of an agricultural commodity possible on such converted wetland after Feb. 7, 2014.

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

### **REGAINING ELIGIBILITY FOR BENEFITS LOST BECAUSE OF A VIOLATION**

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

### **ADDITIONAL INFORMATION**

For additional information on HELIC and WC compliance, contact the FSA office or the NRCS office at a local USDA Service Center. Additional information can be found online at [www.fsa.usda.gov](http://www.fsa.usda.gov) for FSA, [www.nrcs.usda.gov](http://www.nrcs.usda.gov) for NRCS and [www.rma.usda.gov](http://www.rma.usda.gov) for RMA.

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