

For: State and County Offices

**Highly Erodible Land Conservation (HELIC)/Wetland Conservation (WC)
Compliance – Good Faith Determinations**

Approved by: Deputy Administrator, Farm Program



1 Overview

A Background

Recent reviews by the Government Accountability Office and the Office of the Inspector General of the implementation of HELC and WC compliance provisions found that approximately half of the noncompliance cases documented between crop years 1993 and 2001 received “good faith” determinations resulting in no loss of USDA program benefits. The reviews found there was inadequate documentation in a substantial number of these cases to support determinations that an individual or entity acted in “good faith” without the intent to violate HELC/WC provisions.

B Purpose

This notice reminds State and County Offices of procedure that must be followed when processing “good faith” relief requests under HELC/WC compliance provisions.

2 “Good Faith” Determinations

A Legislative Authority

Sections 1212(f) and 1222(h) of the Food Security Act of 1985, as amended, provide that the ineligibility of a person as a result of a violation of HELC/WC provisions may be waived if both of the following apply.

- The person acted in “good faith” and without intent to violate HELC/WC provisions.
- The person implements an approved HELC plan or wetland mitigation plan, as applicable, within a period of time not to exceed 1 year.

Note: A payment reduction applies to “sodbusted” land.

Disposal Date

December 1, 2006
11-22-05

Distribution

State Offices; State Office relay to County Offices

2 Good Faith Determinations (Continued)

B Consequences of Unjustified Relief

To maintain the integrity of HELC/WC provisions, it is necessary to have adequate documentation of the reasons “good faith” relief was granted in a particular case. If the reasons for granting “good faith” relief are not adequately documented, the relief may be viewed as invalid even though appropriate reasons for granting the relief may have, in fact, existed.

Unjustified relief results in:

- a disincentive for producer compliance with HELC/WC compliance provisions
- NRCS personnel questioning the need for making ineligibility determinations that are routinely waived by FSA.

3 County Office Action

A Consulting with NRCS

As required in 6-CP, subparagraph 721 E, NRCS shall be consulted when COC is considering a request for relief under “good faith” provisions. NRCS shall submit information on AD-1068 or AD-1069 and provide supporting information that relates to the facts of the case. This information is crucial for an objective evaluation of whether good faith relief is justifiable in a particular case.

B Good Faith Determination Procedure

When a written request for a “good faith” determination is received from a violating producer, the County Office shall review and comply with the procedure provided in 6-CP, Part 7, including sections dealing with:

- general provisions of good faith relief
- information required from NRCS for determining good faith
- documentation and notifications for good faith determinations
- factors for relief consideration
- producer requirements under the good faith provisions.

As indicated in 6-CP, subparagraph 721 G, “Approvals must be supported by conclusive evidence to indicate that the producer intended to comply without intent to violate and the action was not a scheme or device to avoid compliance.”

Notice CP-599

3 County Office Action (Continued)

C Violation Database

County Offices shall complete FSA-493 for all HELC/WC violations and submit to the State Office according to Notice CP-578 for entry into the web-based violation database. FSA-493's shall be completed even if a "good faith" determination is granted by COC.

County Offices shall review their county data within the database to ensure that all violations are included from crop year 1993 and subsequent years. The database should contain entries for all violations including those for violators who eventually regained eligibility for USDA program benefits.

4 State Office Action

A Review of County Action

State Office shall ensure County Offices and COC's are familiar with the specific provisions of 6-CP associated with "good faith" determinations.

B Violation Reporting

The State Office specialist with responsibility for HELC/WC provisions shall enter information on violations into the national database as soon as FSA-493 is received from the County Office.

Note: The database should include all recorded violations for each county from crop year 1993 and subsequent years.