

For: State and County Offices

Conservation Compliance - Good Faith and Graduated Payment Reductions (GPR's)

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

The Food, Conservation, and Energy Act of 2008 made certain changes to HELC and WC provisions. A rule revision is currently in the clearance process for publication. However, until publication, instructions and procedures are needed to implement the changes to HELC and WC provisions.

B Purpose

This notice:

- provides procedure to administer the legislative change to Good Faith approval process
- provides instructions - to calculate and implement GPR penalties for HELC violators that have approved AD-1068's
- obsoletes Notice CP-644 because equitable relief provisions in subparagraph 5 C have been removed.

2 HELC/WC Violations

A Good Faith Relief

Reinstating eligibility for program benefits because of COC Good Faith determination becomes effective when producers sign an approved conservation or mitigation plan, as applicable.

However, **before** producers are provided the conservation or mitigation plans for signature, the COC-approved Good Faith determination **must** receive SED approval with technical concurrence by the NRCS State Conservationist.

Note: SED's may delegate their approval authority to DD's. State Conservationists may delegate their responsibility for technical concurrence to Area Conservationists.

Disposal Date	Distribution
March 1, 2011	State Offices; State Offices relay to County Offices

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2 HELC/WC Violations (Continued)

B Ineligibility for USDA Program Benefits

HELC/WC violators who do **not** receive COC’s Good Faith exemption with approval by SED and technical concurrence from the State Conservationist shall remain **ineligible** for USDA program benefits for the years in violation.

3 GPR Penalties

A Assessment

All HELC violators that have been provided relief according to this notice are subject to GPR penalty. The amount of GPR will be based on the seriousness of the violation determined by using the number of acres in violation, the associated erodibility index (EI), and the actual soil loss.

Note: GPR’s do **not** apply to WC violators, including violations for planting on a converted wetland.

B GPR Calculations

GPR’s for HELC violations are calculated by multiplying the number of acres in violation times the GPR amount associated with EI and actual soil loss according to the following table.

Per Acre \$ GPR Penalty				
EI	Actual Soil Loss (Multiples 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 and greater	\$ 125.	\$ 250.	\$ 375.	\$ 500.

3 GPR Penalties (Continued)

C Adjustments to the Calculated GPR

The following adjustments may apply to a calculated GPR:

- if the calculated GPR is less than \$1,000, a minimum GPR of \$1,000 applies
- if the calculated GPR is greater than \$10,000, a maximum GPR of \$10,000 applies
- after applying adjustments listed in the first 2 bullets, increase GPR by 20 percent for HELC violations on sodbusted land

Note: Sodbusted land is land that has been converted from native vegetation, such as rangeland or woodland, to crop production after December 23, 1985.

- for HEL violations that NRCS determines to be technical and minor in nature, and has a minimal effect on the erosion control purposes of the conservation plan applicable to the land on which the violation has occurred, GPR shall be \$0.

D GPR Limitation

GPR shall be limited to the lesser of the following:

- GPR determined according to subparagraphs B and C
- earned program benefits for the year of the violation.

E Multiple Affected Producers

AD-1068A shall be used to determine GPR distribution when multiple producers are approved for reinstatement of benefits under AD-1068 for the same HELC violation. AD-1068A will be revised to reflect the higher minimum GPR.

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4 Adverse Determinations

A Lack of SED/DD Good Faith Approval

If SED/DD does **not** approve the Good Faith determination, the producer shall be provided appeal rights to NAD.

B Lack of Technical Concurrence by the NRCS State or Area Conservationist

The determination of technical concurrence will be based on a review of the following:

- proposed conservation or mitigation plan
- factors used to determine GPR for HELC violators.

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

5 County Office Action

A Obtaining AD-1068/AD-1069 Approval

CED shall attach the following to AD-1068 or AD-1069, as applicable:

- a memorandum or approval document signed by SED, or if authority is redelegated, DD
- a document of concurrence signed by the NRCS State Conservationist, or if authority is redelegated, the Area Conservationist.

Note: AD-1068 and AD-1069 will be revised to incorporate the additional signature requirements.

B Applying GPR's

Apply the provisions of this notice to violations that occurred on or after **May 22, 2008**. Use the applicable FI handbooks to assess GPR's.