

# Highly Erodible Land Conservation Fact Sheet

## Variations and Exemptions from Ineligibility

Sections 1213, 1214, and 1215 (16 U.S.C. §3812, 16 U.S.C. §3813 and 16 U.S.C. §3814) of the Food Security Act of 1985, as amended provides the authority and criteria under which USDA agencies (FSA and NRCS) may grant variances or exemptions from potential violations or situations of noncompliance with the HELC provisions.

## Exemptions and Criteria for Granting

The following exemptions from the HELC provisions are provided—

- **Land for which there is no soils mapping available** (see 16 U.S.C. §3812(a); §3813; and 7 CFR 12.5(a)(1)). When USDA participant begins producing annually tilled agricultural commodity crops on land on which there is either no available soils mapping or the soils mapping is not of sufficient quality for making an HEL determination, NRCS must provide adequate soils mapping no later than 2 years from the date that the land is put into crop production.  
Further, the USDA participant must apply a conservation system that would provide sufficient protection to the soils resources in accordance with information developed by the local USDA office in lieu of an official HEL determination. Until such time as an official HEL determination can be made, the USDA participant will not be ineligible for USDA benefits.
- **Cropland from expired CRP contracts** (see 16 U.S.C. §3812(a)(3) and 7 CFR 12.23(d)). When land from an expired or terminated CRP contract is returned to production of annually tilled agricultural commodity crops, the USDA participant shall only be required to apply a conservation system that provides the following level of soil protection—
  - The equivalent level of erosion as the conservation system being used prior to enrollment in the CRP; or
  - A level of protection that is 75% of the PE not to exceed 2T in accordance with 7 CFR 12.23(b) and 7 CFR 12.23(h).

Further, if the conservation plan or conservation system that the USDA participant will be using requires the construction of any structural conservation practices (e.g., terraces, grassed waterways, grade control structures) he or she will be provided up to two years from the date that the CRP contract expired. This period may be extended for

an additional period of one year provided that there is evidence that the participant was unable to implement the required structural practices within the 2-year period.

- **Non-commercial use exemption of agricultural commodities on acreages of 2 acres or less** (see 16 U.S.C. §3812(h) and 7 CFR 12.5(a)(4)). Areas of two acres or less are exempt from the HELC requirements if used for the non-commercial production of an agricultural commodity, and FSA determines the this production is not intended to circumvent the HELC requirements otherwise applicable. An example of this is a home garden.
- **Small areas of non-cropland exemption** (see 7 CFR 12.22(d)). The small areas of non-cropland exemption applies to converted, small, non-cropland areas such as abandoned farmsteads, areas around filled or capped wells, rock piles, trees or brush, etc. within or adjacent to existing fields that are converted to cropland. These areas must be included in a plan or system for adjacent HEL fields and must meet the level of treatment required for such fields. NRCS makes this determination on a case-by-case basis.
- **Good-faith exemption** (see 16 U.S.C. §3812(f)(1-3) and 7 CFR 12.5(a)(5)) The FSA county committee may grant this exemption from the provisions when the farmer or rancher has been found to have made a good faith effort at applying a conservation system that would have met the HELC soil protection requirements and not to have deliberately violated the HELC provisions.

If the USDA participant signs an HEL conservation plan developed by NRCS for the purposes of complying with the HELC provisions, NRCS shall provide sufficient time in which to apply the needed treatments of the HEL conservation system, not to exceed one year from the date the HEL conservation plan is signed by all parties. The conservation plan must be signed by all parties prior to restoration of USDA benefit eligibility for the year of the HELC violation.

- **Relief for undue economic hardship** (see 16 U.S.C. §3812a(a)(4) and 7 CFR 12.23(j)). The FSA State Committee may grant this exemption when a farmer or rancher's conservation system is economically prohibitive to apply and maintain, the technology needed to apply the conservation system is not available within the area, and there are no other conservation alternatives available.

## **Variations and Criteria for Granting**

A variance may provide the USDA participant with an approved variation from the HELC requirements. (Also refer to Part 518, Subpart B for additional guidance). The following variances for from the HELC provisions is provided—

- **HELCS deficiency found while an NRCS employee is providing technical assistance** (see 16 U.S.C. §3814 and 7 CFR 12.5(a)(5)(ii)). This variance is available as an exemption from the HELC provisions if the following criteria are met—
  - A potential HELC violation has been observed by a USDA employee while providing technical assistance.
  - The technical assistance being provided to the USDA participant when the violation has been observed does not involve an official compliance review of HELC or a whistleblower investigation.

If a USDA participant is found to be out of compliance with the HELC provisions, the NRCS employee that has observed the potential violation shall—

- Provide notification of the nature of the violation as well as technical assistance in the form of the conservation treatment needed to be in compliance with the provisions within 45 days of the violation having been found.
  - If the USDA participant signs an HEL conservation plan developed by NRCS for the purposes of complying with the HELC provisions, NRCS shall provide sufficient time in which to apply the needed treatments of the HEL conservation system, not to exceed one year from the date the HEL conservation plan is signed by all parties.
  - Inform the participant that the tract found in violation of the HELC provisions will be reviewed the following year to ensure that the HEL conservation system is being fully implemented.
- **Variance for a minor technical violation that creates only a minimal effect on the effectiveness of the HELC conservation system** (see 16 U.S.C. §3812(f)(4)(A) and 7 CFR 12.5(a)(6)(A)). A compliance deficiency is considered technical and minor in nature if it has little effect on the erosion control purposes of the conservation plan or system.

Deficiencies can be—

- Failure to apply one or more practices according to the FOTG.
- Failure to maintain one or more previously applied practices.

The use of this variance is limited as follows—

- May be used only when the deficiency is minor and has only a minimal effect on the effectiveness of the conservation system.
- May not be used when there has been NRCS error or untimely provision of technical assistance.

- May not be used when a farmer or rancher voluntarily changes a conservation system in place.
- **Variance when special conditions, including weather, pests, or disease exist** (see 16 U.S.C. §3812(f)(4)(C) and §3812(f)(5) as well as 7 CFR 12.5(a)(6)(C)). The USDA participant was prohibited from fully applying an approved conservation system or changed the application of a practice required in the conservation system due to any of the following reasons—
  - Severe weather
  - Pests
  - Disease

The NRCS representative shall respond in writing, within 30-days of receipt of the request for the variance as to approval or disapproval.

If NRCS fails to respond within the 30-day period, the variance becomes automatic, unless the person had reason to know the variance would not be granted, (i.e., a request for the variance based on excessive rain, when county rainfall records for the period cited in the request show a less than normal rainfall.)

If the NRCS representative has reason to believe that the request for the variance is not justified, or that documentation submitted is not sufficient to indicate the existence of a special problem. NRCS, in consultation with the Conservation District, at the local level, will review the requests for the variance, in comparison with the known local conditions and factors.

The following factors shall be considered—

- Incidence of crop disease in the area.
- Percent of stand damaged or destroyed.
- Percent of expected crop production compared to normal production.
- Documentation of weed or insect infestations.
- Comparison of weather event to historical records.
- Documentation of severe weather conditions.
- Other special circumstances that prevented the implementation of conservation practices or systems, installation of structures, or planting of cover crops.
- **Variance for extreme personal hardship** (see 16 U.S.C. §3812(f)(4)(B) and 7 CFR 12.5(a)(6)(B)). The USDA participant is actively applying the conservation system, with the exception of one or more of the required conservation practices because of a specifically identified problem, including—
  - A severe physical condition or death of the farm operator or a family member that prevented the application of the full conservation system.

- Destruction of equipment or farm holdings by fire, natural disaster, or other similar occurrences.
- Special problems or situations, including NRCS error that prevented the USDA participant from applying the practice. Where an NRCS error has been cited, the farmer or rancher must not have had reason to know that the advice or information was erroneous.

The use of this variance is limited as follows—

- If for physical condition of the principal farm operator or destruction of buildings and equipment, there must be sufficient documentation placed in the case file to support the need for the variance.
- If for NRCS error or untimely provision of technical assistance, there must be sufficient information provided in the case file to support the need for this variance as follows—
  - The farmer or rancher applied for technical assistance in sufficient time for NRCS to provide the assistance.
  - The farmer or rancher does not have sufficient knowledge of what was needed in the conservation system to be in compliance with the HELC provisions.
  - There have been no previous uses of this variance for the same reasons.

### **For More Information**

NRCS, [FSA](#), Cooperative Extension Service, or your local conservation district can provide more information. Your [USDA Service Center](#) is listed in the telephone book under *U.S. Department of Agriculture*.

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