



FACT SHEET

UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY & NATURAL RESOURCES CONSERVATION SERVICE

April 2012

Highly Erodible Land Conservation and Wetland Conservation Compliance

Conservation Compliance on Highly Erodible Land and Wetlands

The Food Security Act of 1985, as amended, requires producers participating in most programs administered by the Farm Service Agency (FSA) and the Natural Resources Conservation Service (NRCS) to abide by certain conditions on any land owned or farmed that is highly erodible or that is considered a wetland. Producers participating in these programs and any person or entity considered to be an “affiliated person” of the producer, are subject to these conditions. The regulations covering the conditions are set forth in the Federal Register at 7 CFR Part 12.

Definition of Highly Erodible Land

Highly erodible land is cropland, hayland or pasture that can erode at excessive rates. It would contain soils that have an erodibility index of eight or more. If a producer has a field identified as highly erodible land, that producer is required to maintain a conservation system of practices that keeps erosion rates at a substantial reduction of soil loss. Fields that are determined not to be highly erodible land are not required to maintain a conservation system to reduce erosion.

Definition of a Wetland

A “wetland” is an area that:

1. Has a predominance of hydric soils (wet soils);
2. Is inundated or saturated by

surface or groundwater (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;

3. Under normal circumstances supports a prevalence of such vegetation.

NRCS and FSA Determinations

When making determinations regarding highly erodible land and wetlands:

- NRCS makes technical determinations, such as determining whether land is highly erodible or determining if any exemptions apply to a wetland (such as prior converted); establishing conservation plans and systems for highly erodible land and; determining whether a wetland conversion has occurred or whether highly erodible land is being farmed in accordance with an approved conservation plan or system.
- FSA determines who is impacted by an NRCS technical determination of non-compliance, what penalties will be applied, and acts on requests for the application of an exemption, such as the good faith relief exemption.

Compliance with Highly Erodible Land Conservation and Wetland Conservation Provisions

To be in compliance with the highly erodible land conservation

and wetland conservation provisions, producers must agree, by certifying on Form AD-1026, that they will not:

- Produce an agricultural commodity on highly erodible land without a conservation system;
- Plant an agricultural commodity on a converted wetland;
- Convert a wetland to make possible the production of an agricultural commodity.

Producers planning to remove fence rows, convert woodlots to cropland, combine crop fields, divide a crop field into two or more fields, install new drainage, or improve or modify existing drainage, must notify the FSA and update Form AD-1026. FSA will notify NRCS and NRCS will then provide highly erodible land or wetland technical determinations.

Highly Erodible Land and Wetland Identification

FSA maintains official USDA records of highly erodible land and wetland determinations. The determinations are recorded both within the administrative FSA office’s geographic information system and automated farm and tract records. Producers may obtain aerial imagery of their farms and a printout of their farm and tract records from the FSA office administering their farm; however, it is important to know that determinations may not have included all of the producer’s land. If a producer is uncertain of the highly erodible land and wetland determinations for his/her land,

he/she should contact the FSA office administering his/her farm records for assistance.

Non-Compliance with Highly Erodible Land Conservation and Wetland Conservation Requirements

Producers participating in FSA and NRCS programs who are not in compliance with highly erodible land or wetland conservation compliance provisions are not eligible to receive benefits for most programs administered by FSA and NRCS. If a producer has received program benefits and is later found to be non-compliant, he/she would be required to refund all payments received and may be assessed liquidated damages.

A participant who violates highly erodible land or wetland conservation compliance provisions is determined 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 or years 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 Jan. 1 of the subsequent year.

Regaining Eligibility for Benefits Lost Because of a Violation

Producers who were found to be in violation of highly erodible land conservation or wetland conservation compliance provisions, but did so 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 not to exceed one year. If good-faith relief is approved for a highly erodible land conservation violation, a graduated payment reduction is applied to the reinstated benefits. There are other exemptions that may apply in limited circumstances.

Additional Information

To get additional information on highly erodible land conservation and wetland conservation compliance contact the FSA office or the NRCS office at a local USDA Service Center. Information about programs offered by FSA can be found online at www.fsa.usda.gov, and information on NRCS programs can be found at www.nrcs.usda.gov.

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) 720-2600 (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.