

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Highly Erodible Land Conservation and
Wetland Conservation Provisions
6-CP (Revision 4)**

Amendment 14

Approved by: Acting Deputy Administrator, Farm Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraphs 2 C, 301 I, 329 A, 357 C, 400 D, 422 B, C, and D, 439 B, 502 F, 603 C, 604 O, 606 A, and 641 A and C, have been amended to remove 3-CM references.

Subparagraphs 201 A has been amended to clarify field combinations from new breakings and to reiterate when 2 HEL fields are combined it does not require a redetermination.

Subparagraph 232 D has been amended to remove the requirement to complete an FSA-569 for the RMA one and two reinsurance year wetland conversion violation producer exceptions.

Subparagraph 301 F has been amended to clarify AD-1026 certification requirements for joint ventures.

Subparagraph 302 C has been amended to add affiliate example and clarify affiliate AD-1026 filing requirements.

Paragraph 307 has been added to provide AD-1026 filing requirements for urban agriculture situations.

Paragraph 357 has been amended to reference Conservation Desktop HELC/WC Tracker Tool for AD-1026 referrals.

Subparagraph 421 E has been amended to add the formerly used wetland determinations of RCW (Relief Converted Wetland) and RECW (Relief Exemption Converted Wetland).

Subparagraph 422 B has been amended to clarify that tract designation “HEL, conservation system is **not** being actively applied” is only applicable for NRCS FSA-569 confirmed HEL violations.

Paragraph 500 has been amended to provided additional information on NRCS compliance review and remove information about the National Compliance Review process.

Amendment Transmittal (Continued)

A Reasons for Amendment (Continued)

Subparagraph 501 F has been amended to reference HELC/WC tracker tool for NRCS requested noncompliance FSA-569’s.

Subparagraph 502 D has been amended to reference Conservation Desktop HELC/WC Tracker Tool for FSA-569 referrals.

Subparagraph 502 F has been amended to provide instructions to notate appeals to COC of NRCS technical determinations in Conservation Desktop HELC/WC Tracker Tool.

Paragraph 504 has been amended to provide guidance for monitoring FSA-569 referrals.

Subparagraph 602 B has been amended to provide guidance about the applicability of farm/tract producer exception of “new producer after CW”.

Subparagraphs 602 E and F have been amended to clarify affiliate violations.

Subparagraphs 621 A and 631 A have been amended to clarify that SED delegation needs documentation.

Subparagraph 632 A has been amended to clarify the difference in the terms of restoration and mitigation.

Subparagraph 637 A has been amended to clarify reductions in ineligibility for planting on converted wetland violations.

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Part 1 General Information

1 Objectives and Overviews of HELC and WC Provisions

A Objectives

The objectives of HELC and WC are to:

- reduce soil loss because of wind and water erosion
- protect the nation's long-term capability to produce food and fiber
- reduce sedimentation and improve water quality
- help preserve the nation's wetlands
- remove incentives for persons to produce agricultural commodities on HEL or converted wetland.

B Overview of HELC Provisions

The 1985 Act, as amended, provides that persons who produce an agricultural commodity on a field on which HEL is predominate, or designate land on which HEL is predominate to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity, shall be ineligible for benefits under certain programs administered by USDA, unless the production of an agricultural commodity on HEL is in compliance with an approved conservation plan or system or an exemption applies.

C Overview of WC Provisions

The 1985 Act, as amended, provides that, unless exempt, persons are ineligible for benefits under certain programs administered by USDA if they:

- plant an agricultural commodity on wetland that was converted after December 23, 1985
- convert a wetland after November 28, 1990, by draining, dredging, filling, leveling, or any other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible.

***--Note:** The date of February 7, 2014, applies to ineligibility for the federal crop insurance premium subsidy.--*

2 Source of Authority and Related References

A Legislative History

The source of authority for conservation compliance is the 1985 Act (Pub. L. 99-198) as amended by:

- Food Security Act of 1985 amendment (Pub. L. 100-28)
- Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624)
- Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127)
- Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171)
- Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246)
- Agricultural Act of 2014 (Pub. L. 113-79).

B Federal Regulations

Regulations governing the administration of HELC and WC provisions are provided in 7 CFR Part 12.

C Related Handbooks

The following handbooks relate to HELC and WC provisions:

- *--10-CM for farm, tract, crop data, farm records, and reconstitutions--*
- 1-GIS for CLU and FSA wetland point layer
- 3-PL (Rev. 2) for web-based subsidiary files for 2009 and subsequent years.

3 Applicability

A Program Applicability

The provisions of the handbook apply to all payments, loans, or other benefits under programs administered by FSA and NRCS with the following exceptions applicable to NRCS:

- Agriculture Management Assistance Program
- Emergency Watershed Protection Program
- Healthy Forests Restoration Program.

Federal crop insurance premium subsidies administered by RMA are a benefit subject to the provisions of this handbook.

B Person Applicability

The provisions of this handbook apply to any individual, legal entity, business enterprise, State, political subdivision, or agency that requests payments, loans, or other benefits subject to the provisions of this handbook and any affiliated persons as defined in this handbook.

200 Overview of HELC Provisions (Continued)

C Summary of HELC Exemptions or Relief

The following table provides paragraph references for various exemptions or relief applicable to HELC provisions.

Exemption or Relief	Paragraph References
Undue economic hardship	204
NRCS exemptions	206
Landlord exemption	603
Tenant HELC exemption – landlord refusal	604
Good faith relief	616, 621-623

201 Redefining Fields With Previous NRCS HEL Determinations

A Fields Requiring an NRCS Redetermination

Changes to the field after NRCS has made previous HEL/NHEL determinations must be forwarded to NRCS for a redetermination using AD-1026 when the field boundary has physically changed.

Examples: Clearing or breaking of undetermined surrounding land (excluding removal of fence or tree line, or minor changes from better measurements because of the use of digital photography) requires a HEL determination on that acreage, if *--used to produce an agricultural commodity. New breakings must be designated as a separate field (CLU) until the NRCS HEL determination process is completed (see subparagraph 357 B). If that newly determined acreage is--* combined with an existing determined field this results in a field combination (paragraph 202 applies).

* * *

Reduction in a field size because of land taken out of agricultural production.

--Combination/division of previously delineated fields (except when 2 HEL fields are combined, see subparagraph B).--

201 Redefining Fields With Previous NRCS HEL Determinations (Continued)**B Fields Not Requiring an NRCS Redetermination**

Changes in field boundaries that do **not** meet the criteria in subparagraph A for an NRCS redetermination shall either:

- be labeled “HEL” when multiple fields are combined and all of the fields were previously determined to be HEL

Note: Fields that were previously determined to be HEL remain HEL when combined with another field.

- *--be labeled “no determination” (UHEL, undetermined for highly erodible land).

Note: Areas labeled as “UHEL” or without HEL determination in the automated tract--* file, will require a new NRCS determination if the producer intends to plant a commodity crop on the field. A referral to NRCS is required with a “Yes” response on AD-1026, Part B, item 6.

C Other Changes That Do Not Require a HEL Redetermination

HEL redeterminations by NRCS are **not** required when any of the following apply.

- The FSA acreage measurement is corrected and there has been no change to the physical boundaries of the field, such as a change in acreage because of GIS measurement. The *--original NRCS determination must be retained.--*
- Changes to a farming operation resulting in a reconstitution that has no impact on previous HEL/NHEL determinations or producer eligibility.

Examples: Reconstitutions resulting from the sale or loss of a rented tract.

Reconstitutions involving the purchase or additional rental of tracts with previous HEL/NHEL determinations.

D Producer Requests for Redeterminations

The producer may make a request directly to NRCS to do either of the following:

- validate an existing HEL determination of the field if there is reason to believe the designation resulting from a field combination or division is **not** correct
- redefine a field to delineate that portion that is substantially NHEL, from that field for different management uses.

232 Additional Time Before Ineligibility (Continued)**C New Insurance Policy Exemption (Continued)**

The exemption:

- applies only to the policy or plan of insurance that becomes available to a producer for the first time after February 7, 2014, as determined by RMA
- does not exempt or otherwise negate the producer's ineligibility for federal crop insurance premium subsidies on any other policy or plan of insurance
- applies only if the producer takes the steps necessary, as determined by NRCS, to mitigate all wetlands converted after February 7, 2014, in a timely manner, as determined by NRCS but not to exceed 2 reinsurance years.

D Conservation Compliance Eligibility

Those certifying to conservation compliance for the reinsured crop insurance premium subsidy benefit for either exemption in subparagraph A or B shall be changed to "certified", for AD-1026, with applicable farm/tract RMA producer exception of "1RY Exemption" or "2RY Exemption" to communicate their eligibility to RMA. Their tract data shall be flagged with the appropriate wetland violation ("wetland converted after February 7, 2014") to communicate ineligibility for FSA and NRCS programs.

* * *

- *--The beginning of the reinsurance year, after the exemption expires, an inquiry with NRCS will need to be made to determine if the producer has initiated a restoration or mitigation plan to maintain eligibility into the next applicable reinsurance year. An updated NRCS-CPA-026 is issued if a converted wetland is restored or mitigated.--*

232 Additional Time Before Ineligibility (Continued)**D Conservation Compliance Eligibility (Continued)**

If the restoration or mitigation is not completed within the required 1- or 2-reinsurance-year time period * * * wetland tract data will not be updated and the individual or entity certifying to compliance for these exemptions will be changed to “not filed” for AD-1026, with *--applicable RMA farm/tract producer exception removed, to communicate ineligibility to--* RMA.

Update the system to have a producer’s farm/tract eligibility in the conservation compliance section of the web-based subsidiary set to “past violation” with year, State, and county where the violation occurred if the producer is no longer associated with the farm/tract of the violation requesting exemption.

Applicable affiliates are communicated NRCS and FSA ineligible with “Affiliate Violation” in AD-1026, section of subsidiary. They are communicated RMA eligible with “no” (ineligible with “yes”) in the Affiliate Violation for RMA portion of AD-1026 subsidiary, (“Is the Producer’s Affiliate Violation applicable to RMA?”).

Note: It is an RMA determination if the exemption in subparagraph C (new insurance policy exemption) is applicable. A producer may be eligible for the premium subsidy if it is new but may not be on other policies or plans of insurance. Therefore, those individuals and entities will be “not filed” for AD-1026 if either exemption in subparagraph A or B is not met.

233 Wetland Determinations Applicable to FCIC Only**A Converted Wetland Payment in Lieu**

There is an exemption for wetland conversion for FCIC participants only that impacts less than 5 acres. In lieu of ineligibility for federal crop insurance premium subsidies for a policy or plan of insurance because a wetland conversion violation or concurrent with a planned wetland conversion occurring after February 7, 2014, a person may, if approved by NRCS, pay a contribution to NRCS in an amount equal to 150 percent of the cost of mitigating the converted wetland, as determined by NRCS. A person is limited to only one exemption, as determined by NRCS per farm. Wetlands granted this exemption are identified as “CWIL” (converted wetland payment in lieu) on NRCS-CPA-026e.

301 AD-1026 Filing Requirements (Continued)

C When to File AD-1026

There is no specific deadline for filing AD-1026 for FSA and NRCS benefits unless otherwise provided in specific program procedure. However, before a producer can be considered eligible for benefits subject to the provisions of this handbook, the producer and producer's affiliated persons, if applicable, must have filed and certified compliance with HELC and WC provisions. AD-1026 is considered filed and certified when AD-1026, Part D, item 10A is signed and AD-1026 is submitted to a County Office (certification date should be recorded with date received or date of post mark if mailed).

The federal crop insurance subsidy administered by RMA had a filing deadline of June 1, before the beginning of the reinsurance year (July 1), for which premium subsidy is being requested for reinsurance years 2016 and 2017. For reinsurance year 2018 and subsequent years, AD-1026 must be on file on or before the premium billing date for the policy or plan of insurance. Certification for RMA is continuous (a new AD-1026 does not have to be filed each reinsurance year) and only requires updates according to paragraph 305.

D AD-1026 Certifications for Programs Covering Past Years

In certain cases, a producer may apply for program benefits that are applicable to previous program or crop years.

If AD-1026 was **not** on file for the year of eligibility, the certification of compliance must be completed before issuing program payments. The County Office shall instruct the producer to complete AD-1026 for the year of eligibility by:

- entering the applicable program or crop year in Part A, item 3

Example: If a producer is completing an application in 2014 for program benefits associated with 2012, "2012" shall be entered in Part A, item 3.

- answering the questions on AD-1026 about the year indicated in Part A, item 3.

E Updating AD-1026 Field in Eligibility File

County Offices will update the AD-1026 field in the web-based eligibility system according to 3-PL (Rev. 2).

F Joint Venture Without ID Number

*--A joint venture can be the producer requesting benefits. Therefore, the producer must certify to compliance with AD-1026 (applicable to joint ventures with and without an EIN).

However, AD-1026 must be "certified" in subsidiary to each member as payments read eligibility to the member level for these entities. Affiliated persons of the members with farming interests must file AD-1026. See 3-PL, subparagraph 25 C for recording AD-1026 certification of members that are not affiliates required to file.

301 AD-1026 Filing Requirements (Continued)**G Revocable Trust Without Employer IRS ID Number**

Since the AD-1026 certification statement by the grantor “includes all land in which [the grantor has] or will have an interest,” there is no need to obtain a separate AD-1026 from the trust.

However, if the individual beneficiary is different from the grantor and is receiving premium subsidy on a Federal Crop Insurance policy, they are required to file AD-1026 because they are receiving a benefit subject to conservation compliance. See subparagraph 336 A.

Affiliated persons of the grantor must also file AD-1026 if they have farming interests.

H One Member LLC Without Employer IRS ID Number

If AD-1026 is on file for the individual who is the sole member of an LLC using the individual’s SSN rather than an EIN, it is not necessary to obtain a separate AD-1026 for the LLC.

I Updating Tract Records

Tract records, including the recording of NRCS HEL and wetland determinations, must be updated in the producer’s administrative County Office as determined by * * * 10-CM.

For multi-county producers, the administrative County Office for a particular tract may be different than the producer’s recording County Office.

J Responsibility of Producer Requesting Benefits

The producer requesting benefits is responsible for providing the County Office, in which AD-1026 is filed, a copy of AD-1026 filed by their affiliated persons in their respective County Offices. County Offices may be able to assist the producer with that requirement by requesting an e-mailed PDF copy from the affiliated persons’ recording County Offices.

K Certification for Risk Management Agency (Number 6 of the Appendix)

Number 6 of the appendix of AD-1026 identifies the wetland conservation compliance date applicable to RMA as February 7, 2014 (paragraph 231). In addition, there are RMA HELC and WC exemptions identified in paragraphs 207, 232, and 233. These are also referenced in number 6 of the appendix.

There is only one AD-1026 to take either certification (the eligibility for FSA, NRCS, and RMA, or RMA only). See paragraphs 207, 231, 232, and 233 for recording a certification of compliance when it would only be applicable to RMA.

RMA determines a producer’s eligibility or ineligibility for premium subsidy for an applicable reinsurance year from FSA’s current year AD-1026 subsidiary file. County Offices will not give copies of a producer’s AD-1026 to crop insurance agents or AIP’s.

302 Affiliated Persons – Determination and AD-1026 Requirement (Continued)

C AD-1026 Filing Requirement for Affiliated Persons

All affiliated persons with farming interests, as the affiliated producer representation, must file AD-1026 before the producer requesting benefits is considered “certified”.

Note: The “awaiting affiliate certification” in the AD-1026 section of subsidiary will reflect the producer as ineligible until all applicable affiliates have a certified AD-1026.

Because conservation compliance certifications and affiliate violations are only determined at the first level, affiliates with farming interests required to file AD-1026 that do not request any USDA benefits subject to conservation compliance do not have the same affiliate provisions to their certification. Affiliates meeting this criteria will have AD-1026 block 4 identified as “affiliate certification only” with the producer listed whose affiliation required their certification requirement.

Note: The AD-1026 certification will be identified as “awaiting affiliate certification” for these producers as a reminder if they seek benefit subject to conservation compliance they may need to update AD-1026 block 4 (which may require *--additional producers to fall under affiliate provisions). Members of joint ventures with this situation must be recorded as “certified” because payments read their eligibility to the member level. See subparagraph 301 F.

Affiliated persons are considered as having farming interests if the affiliated person is listed as owner, operator, tenant, or other producer on any farm or undeveloped land with a producer representation as the affiliated person.

Example: ABCD LLC has 4 first level members at 25 percent shares (siblings Andrew, Barbara, Charles, and Diane). They have a farming interest as owners of 160 acres of pastureland they inherited from a deceased relative. They apply and are accepted into EQIP to install cross fencing and an additional livestock watering source to implement a planned grazing system for their tenants. ABCD LLC must certify to compliance to receive their EQIP benefit. Andrew is owner and operator of 80 acres of pastureland in another State. Charles is owner and operator of several thousands of acres of cropland in the same county/State as ABCD LLC. Andrew does not participate with USDA. Charles participates in ARC/PLC and Federal Crop Insurance. The only farming interest Barbara and Diane have is their membership share in the LLC. Statutorily conservation compliance applies to a person/producer seeking USDA benefit subject to it, on all their farming interests, not just those seeking benefit. Entities are still comprised of persons. Because Andrew and Charles have farming interest as an individual, they are required to be certified in block 4 of ABCD LLC’s AD-1026. Charles already has a certification on file. However, Andrew must also certify to his farming interest regardless of the fact he does not receive any USDA benefits as an individual.--*

302 Affiliated Persons – Determination and AD-1026 Requirement (Continued)

C AD-1026 Filing Requirement for Affiliated Persons (Continued)

*--Andrew and Charles are affiliates with farming interests. As first level members, Barbara and Diane are also affiliates, but their only farming interest with the LLC has already been captured with the LLC's certification. They do not have any farming interests separate from the LLC. They are not certified in the LLC's block 4 of AD-1026 and do not certify to compliance as individuals (their only farming interest as a member of the LLC has already been captured with the LLC's certification).

Note: A spouse or minor child of the person requesting benefits is **not** required to file--* AD-1026, if both of the following apply for the spouse or minor child:

- does **not** have a farming interest as an individual or member of a joint operation separate from the person requesting benefits
- does **not** receive USDA benefits subject to conservation compliance under his or her individual ID number.

Note: RMA has a husband/wife exemption. Either spouse may insure all interest in the crop under 1 policy. A husband and wife have an interest in each other; therefore, a spouse can insure all of the land interests of the other spouse, unless proven to be legally separated. Spouses insuring with this RMA exemption are receiving a program benefit under their individual ID number and are required to file AD-1026.

Example: The husband files AD-1026. The wife's only farming interest separate from the husband is as a beneficiary of a trust. The trust files AD-1026. The wife is **not** required to be listed on the husband's AD-1026, Part A, item 4 and is **not** required to file AD-1026 as an individual, if she does **not** receive benefits under her individual ID number.

--Wetland violations apply to the producer for the year of the conversion and each subsequent year until restored or mitigated. Producers that remain in violation, from past farm record association, are still considered a producer with a farming interest, even if they have no current farming interests, for past association to a wetland violation that has not been restored or mitigated. Therefore, the producers are required to be certified in AD-1026, item 4 if an applicable affiliate, resulting in affiliate violation to the certifying producer. See subparagraph 602 E for affiliate violation applicability for members of an entity.--

302 Affiliated Persons – Determination and AD-1026 Requirement (Continued)**D Affiliated Persons of Multi-County Producers**

Affiliated persons of a multi-county producer must file AD-1026 in the FSA recording County Office designated for the affiliated person. Only the affiliated persons with farming interests are required to complete AD-1026.

E SBI and Affiliated Persons

A substantial benefit interest is an interest held by any person of at least 10 percent in the insured person.

Example: Two partnerships that each have a 50 percent interest in the insured person and each partnership is made up of 2 individuals, each with a 50 percent share in the partnership. Each individual would be considered to have a 25 percent interest in the insured person, and both the partnerships and the individuals would have SBI in the insured person.

There is not an AD-1026 certification to compliance filing requirement for SBI of an insured. However, if SBI has their own farming interest, of which they insure, they are required to file AD-1026 to remain eligible for their premium subsidy.

The rules for determining if a person has SBI in an insured and the rules for determining if a person is an affiliated person are different. A person can have SBI in an insured but not be an affiliate person to the insured. This paragraph and AD-1026 Appendix, item 7 shall be used to determine affiliated persons that are required to file an AD-1026 for conservation compliance.

306 Completing and Obtaining AD-1026 (Continued)

C Completing AD-1026 (Continued)

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Item	Instruction						
Part B – HELC/WC Compliance Questions							
6	<p>ENTER “X” in either the “Yes” or “No” box.</p> <p>Answer “Yes” if during the crop year entered in Part A, or the term of a requested USDA loan, the producer in Part A, did or will plant and produce an agriculture commodity on land for which an HEL determination has not been made.</p> <p>If “Yes” is answered, FSA will request a HEL determination from NRCS for the specific fields provided in Part C.</p>						
7	<p>ENTER “X” in either the “Yes” or “No” box for each of the items in 7A, 7B, and 7C. Item 7A, 7B, and 7C questions refer to drainage activity.</p> <table border="1" data-bbox="375 730 1474 953"> <thead> <tr> <th data-bbox="375 730 751 766">IF...</th> <th data-bbox="751 730 1474 766">THEN...</th> </tr> </thead> <tbody> <tr> <td data-bbox="375 766 751 842">“Yes” is answered in item 7A or 7B</td> <td data-bbox="751 766 1474 842">FSA will request a wetland evaluation from NRCS for the specific areas listed in Part C.</td> </tr> <tr> <td data-bbox="375 842 751 953">“Yes” is answered in item 7C (maintenance)</td> <td data-bbox="751 842 1474 953">a certified wetland determination is not required. NRCS will be notified of the intention to maintain an existing drainage system.</td> </tr> </tbody> </table>	IF...	THEN...	“Yes” is answered in item 7A or 7B	FSA will request a wetland evaluation from NRCS for the specific areas listed in Part C.	“Yes” is answered in item 7C (maintenance)	a certified wetland determination is not required. NRCS will be notified of the intention to maintain an existing drainage system.
IF...	THEN...						
“Yes” is answered in item 7A or 7B	FSA will request a wetland evaluation from NRCS for the specific areas listed in Part C.						
“Yes” is answered in item 7C (maintenance)	a certified wetland determination is not required. NRCS will be notified of the intention to maintain an existing drainage system.						
8	<p>ENTER “X” in Box A, if the producer represented in Part A has FCIC crop insurance and AD-1026 represents the first time the producer in Part A, including affiliated person, has been subject to HELC and WC provisions.</p> <p>ENTER “X” in Box B, if either of the following applies to the producer in Part A for the specified crop year in Part A number 3:</p> <ul style="list-style-type: none"> • tenant on a farm that will not be in compliance with HELC and WC provisions because the landlord refuses to allow compliance, but other farms associated with that landlord are in compliance (AD-1026B must be completed) • landlord of a farm that is not or will not be in compliance with HELC and WC provisions because of a violation by the tenant on that farm, but other farms not associated with that tenant are in compliance (AD-1026C must be completed). <p>If neither Box A or B are checked, proceed to Part D.</p>						

--*

306 Completing and Obtaining AD-1026 (Continued)

C Completing AD-1026 (Continued)

Item	Instruction
Part C – Additional Information	
9	Must be completed only if “Yes” was answered in Part B, item 6 or 7. List farm, tract, and field number in A. Briefly describe activity in B. List land use and specify crops in C. List the location county in D. Forward to NRCS the request for determinations only for those fields that will be used in the production of an agriculture commodity as defined by HELC and WC, or locations specifically identified for wetlands determinations in Part B.
Part D – Certifications	
10	The producer shall read the Certification of Compliance statement and sign and date the certification. The producer should not sign AD-1026 if the producer’s farming operation is not in compliance with all HELC and WC provisions.
11	This item is for FSA use only .

--307 Urban Agriculture*A AD-1026 Certification**

Certification of conservation compliance (AD-1026) is required for producers seeking any USDA benefit subject to it:

- FSA farm loans
- FSA farm programs
- NRCS programs
- Federal crop insurance premium subsidies administered by RMA.

B Certification of Compliance Application

The certification is applicable to all producer's agricultural interests (that is, owner, operator, or other producer) on all agricultural land (cropland, rangeland, pastureland, and forestland), including those interests that seek no benefit.

A producer may seek USDA benefits subject to conservation compliance on agricultural interests that do not involve agricultural land (for example, beehives, nursery buildings, livestock housed in buildings or feedlots). These interests are not applicable to certification questions in AD-1026, Part B (questions 6 and 7). However, certification is still required. Therefore, if their only agricultural interests are not tied to agricultural land, they certify to compliance with box 5 A. If they have a mix of interests (some on agricultural land and some on non-agricultural land) their certification evaluation for Part B questions 6 and 7 do not apply to the non-agricultural land interests.

Example 1: Greta Green has a nursery building that produces greens. She applies for an FSFL for a building that will be constructed next to her nursery building. She certifies to box 5 A as these are her only agricultural interests. She has no interests tied to agricultural land.

Example 2: Charlie Chef leases commercial space of a condo building for his restaurant business in New York City. He also leases the roof top space for growing vegetables, for the restaurant, with roof top agriculture methods. He participates in NAP for the vegetable operation. He grew up in Custer County Nebraska and inherited 40 acres of cropland and 40 acres of pastureland on an 80-acre parcel which he leases and seeks no USDA benefits. He has 2 farming interests, one as operator on his rooftop lease, and one as owner on his 80 acres in Nebraska. He must certify to compliance for all his farming interests (including the one that he seeks no benefit). Since one interest applies to agricultural land, he must certify to all of AD-1026, Part B. However, his leased interest, on non-agricultural land (the rooftop), has no evaluation for Part B questions 6 and 7.--*

--307 Urban Agriculture (Continued)*C Non-Agricultural Land**

These are the urban agricultural settings that do not constitute agricultural land:

- rooftops
- raised beds
- any permanent structures serving as nurseries, greenhouses, hydroponic (including all permanent hoop houses, including those using natural ground for production).

Note: Some permanent hoop houses are designated as cropland according to 10-CM. For conservation compliance purposes any permanent structure is considered a building, regardless of building materials, foundation presence, or cropland status. Temporary movable high tunnels, used to extend growing seasons, are not permanent and are considered a practice. Any fields using high tunnels are subject to WC and HEL provisions with evaluations for AD-1026 questions 6 and 7.

D Agricultural Land

The only agricultural land setting for urban agriculture, that requires evaluation of AD-1026, Part B questions 6 and 7 possible referral to NRCS for possible HEL and wetland determinations, is open lots (small field settings, for example, 200 ft x 200 ft open lot is used for produce/vegetable production), including open lots using high tunnels.

E Environmental Wetland Evaluations

Acreages determined to need an assessment for environmental wetland evaluations (for example, permanent hoop house being constructed with EQIP cost sharing assistance) on non-agricultural land (subparagraph C) are not evaluated/referred through the AD-1026 certification process, as questions on number 7, are not applicable to non-agricultural land. Those evaluations are made with applicable NRCS environmental evaluations for NRCS programs or FSA-850 and FSA-858 for FSA loans and programs.--*

308-327 (Reserved)

329 Printing and Using Producer Farm Data Report

A Printing Producer Farm Data Report

A single Producer Farm Data Report covering all of the producer's farming interests in the country may be printed from any County Office according to * * *10-CM.

B Using Producer Farm Data Report

The Producer Farm Data Report includes the following:

- all of a producer's farming interests by county, farm, and tract numbers
- whether the tract includes any fields with HEL or wetlands.

The information on the Producer Farm Data Report may be useful to a producer when completing the questions on AD-1026. However, its use is **not** a requirement for producer certification on AD-1026.

330-334 (Reserved)

Section 3 Referrals to NRCS**356 When to Refer AD-1026 to NRCS****A Background**

AD-1026 documents the producer's cropping, drainage, and land manipulation intentions for determining whether a referral to NRCS for HEL or wetland determinations is necessary.

If referrals to NRCS are necessary, then AD-1026 serves as the transmittal document.

B Reviewing AD-1026

County Offices shall review AD-1026 completed by the producer and refer AD-1026 to NRCS when either of the following applies:

- *--“Yes” is answered in Part B, item 6, 7A, 7B, or 7C--*
- there is reason to believe the questions were not answered correctly and an NRCS determination is necessary before FSA can determine whether the producer is out of compliance.

356 When to Refer AD-1026 to NRCS (Continued)

C Referral to NRCS Because of Maintenance

When producers answer "Yes" on AD-1026, Part B, item 7C, they are certifying that they intend to perform maintenance on a drainage system or other manipulation of a wetland that took place before December 23, 1985. AD-1026, Part B, item 7 instructs FSA to refer a copy of AD-1026 when Part B, item 6, 7A, 7B, or 7C is answered "Yes".

NRCS assistance is **not** required for normal maintenance of existing drainage systems. Therefore, NRCS-CPA-026e will **not** be issued by NRCS in response to receiving AD-1026 on which only Part B, item 7C is answered "Yes". However, NRCS will maintain a record of these AD-1026's as a record of maintenance that has been performed.

FSA County Offices shall provide NRCS with an "Informational Copy" of AD-1026 when the only reason for the referral is a "Yes" designation in Part B, item 7C.

Since NRCS-CPA-026e will **not** be provided to FSA in these cases, the FSA County Office *--will check "no" under "Referred to NRCS" in the producer's subsidiary file according--* to 3-PL (Rev. 2), subparagraph 29 C.

D Exemption for Referral to NRCS on Interseeded Permanent Pasture

Many acres of permanent pasture are annually interseeded in the early fall with small grains to provide winter grazing when grass goes dormant. According to the National Food Security Act Manual, interseeding a small grain for grazing does not require a HEL determination because of an exemption. The exemption is listed in the National Food Security Act Manual, Fifth Edition, Part 520.14, C. Therefore, no HEL determination is required, nor is an AD-1026 referral to NRCS required for these situations.

357 Preparation for Referral to NRCS

A Referrals to NRCS

*--When a referral to NRCS is necessary according to paragraph 356, initiate the referral in the Conservation Desktop production site (user guide and training materials posted in the training SharePoint at [FPAC-FSA-DAFP - Training Presentations - By Program Area and Program \(sharepoint.com\)](#), Program Area - "Common", - Program "HELC/WC"). Access within FSA applications:

- ☆ [Conservation Desktop HELC/WC Tracker Tool](#)
- ☆ [Conservation Desktop HELC/WC Tracker Tool Training Site](#)

--*

357 Preparation for Referral to NRCS (Continued)

B County Office Referrals to NRCS

County Offices will prepare the necessary documents for referral to NRCS for HEL or wetland determinations for land located in their counties according to the following table.

Task	Action
CLU Delineation	Boundaries for new breakings must be drawn out in CLU before submitting AD-1026 to NRCS. The proposed new boundaries must be delineated using existing imagery, producer provided information, or measurement service. At the time the producer notifies FSA that they are proposing to break out new ground, or remove trees, and FSA delineates that proposed boundary, it must not be coded as cropland with a 3-CM cropland indicator of “Yes” until it is known that the producer brought the land into production. Once it has been determined that the land has been brought into production, either when the producer reports the acreage to a crop, verified through new imagery, or verified through a field visit, the 3-CM indicator must be set to “Yes”. All CLU’s delineated for NRCS determination must be reviewed when new imagery is received to verify the accuracy of the delineations and can also tell that the land was brought into production.
Prepare copies of aerial imagery	<p>Prepare the following for required determinations.</p> <ul style="list-style-type: none"> ●*--Attach a copy of the Farm Producer Data Report.--* ● On a tract map, identify fields requiring determinations - fields for which a “Yes” answer on AD-1026, Part B, item 6 or 7 (trees removal) applies. ● If native vegetation conversion applies, according to subparagraph 17 A, identify acreage with “X”. ● Manually identify any drainage activity (item 7 tiling, ditching, etc.) completed or proposed on the map. Drainage activity is not permanently delineated in the CLU. <p>Note: Determinations are needed for:</p> <ul style="list-style-type: none"> ● fields that either have been or will be planted to agricultural commodities ● drainage activities that have not been previously evaluated by NRCS.
Complete AD-1026, Part D, item 11	<p>On AD-1026, Part D, item 11:</p> <ul style="list-style-type: none"> ● enter the date AD-1026 is referred to NRCS ● County Office employee responsible for the referral to NRCS will sign and date.
Send to NRCS	*--Refer to NRCS within Conservation Desktop HELC/WC tracker tool.--*

357 Preparation for Referral to NRCS (Continued)

C Example of AD-1026 Referral for Multi-County Producer

The following table provides an example of referring AD-1026 to NRCS for a multi-county producer.

Situation: Producer X has farming interests in Counties A, B, and C. County C is the recording County Office. The question in AD-1026, Part B, item 7A is answered “Yes”. County A, farm 200, tract 1025, field 1, is indicated on AD-1026, Part C.

Step	Action
1	County C makes a copy of AD-1026 and forwards to County A.
2	County A receives AD-1026 for Producer X from recording County C. County A shall: <ul style="list-style-type: none"> • complete a farm photocopy for the field that needs a determination as listed in - AD-1026, Part D • contact the producer, if additional information is needed • attach a farm photocopy to a copy of AD-1026, and send to NRCS.
3	When NRCS determination is received, County A shall: <ul style="list-style-type: none"> • record determination for the tract according to * * * 10 CM • record NRCS determination in the Service Center GIS system •*--forward copies of NRCS-CPA-026-WC or HELC to recording County C.--*

358-399 (Reserved)

***--400 Information From NRCS on NRCS-CPA-026e, NRCS-CPA-026-HELC and -WC, or Wetland Certification Letter (Continued)**

C Examples of Forms (Continued)

Previously Authorized Wetland Labels

The following wetland labels have been discontinued but may have been used on older certified wetland determinations.

Label/Name	Criteria for Determination	Authorized Uses	Authorized Maintenance
CC (Commenced Conversion)	Conversion began before December 23, 1985 and was approved by FSA; conversion activity was completed by January 1, 1995.	No restrictions provided activities were completed per conditions.	As stipulated in the agreement.
CWNA (Converted Wetland for non-agricultural purposes) Note: The WX label is now used for this purpose	Wetland was converted prior for non-agricultural purposes.	Production of agricultural commodities will cause ineligibility.	No restrictions.
NI (Not Inventoried)	A wetland determination was not conducted on the area.	Uncertain until certified wetland determination is completed for the area labeled NI.	Uncertain until certified wetland determination is completed for the area labeled NI

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400 Information From NRCS on NRCS-CPA-026e, NRCS-CPA-026-HELIC and -WC, or Wetland Certification Letter (Continued)**D Notification of Certified Wetlands by Letter Instead of NRCS-CPA-026e**

NRCS will provide an official “certified” wetland determination to producers upon receiving a written request from the producer. Areas with previous wetland determinations that are **not** changed from an earlier NRCS-CPA-026 or NRCS-CPA-026e will be certified as accurate by a letter to the producer with a copy to FSA. County Offices shall:

- attach the letter to the original NRCS-CPA-026 or NRCS-CPA-026e for the tract
- coordinate documenting certified wetland on official aerial photography according to 2-CP, paragraph 495
- update the wetland certification for the tract according to * * * 10-CM.

E Providing NRCS With Names and Addresses

NRCS has adopted a policy to officially notify **all** producers on tracts about technical determinations completed by NRCS.

FSA employees shall provide NRCS with the current names and addresses of the operator, owners, and other producers for each tract for which NRCS requests this information. Ensure that the latest available information is provided to NRCS.

Note: This process is in place for determinations requested on FSA-569. FSA is required to list the names and addresses for all producers on FSA-569. NRCS uses this information for notifying affected producers.

Section 2 Updating Imagery and Records With NRCS Data

421 Updating Aerial Imagery

A Maintaining Official Records

FSA shall maintain official USDA records of HEL and wetland determinations by farm, tract, and field number. These determinations shall be recorded and maintained within the Service Center's GIS.

B HEL Labels

NRCS will identify HEL determinations on fields as follows:

- "HEL" for a field predominately highly erodible
- "NHEL" for fields **not** predominately highly erodible.

FSA shall transfer NRCS labels to GIS by designating the HEL determination as an attribute of CLU.

*--Follow the procedure in 1-GIS to attribute CLU with HEL determinations. The following--
*

codes shall be used as HEL attributes:

- "H" - Highly Erodible Land
- "N" - Nonhighly Erodible Land
- "E" - Exempted Highly Erodible Land
- "U" - Undetermined.

Note: "U" indicates that a HEL determination has **not** yet been completed for CLU.

C Documenting Wetland in GIS

Wetland shall be documented within the Service Center's GIS as a wetland point layer.

--The wetland point layer shall be maintained according to 1-GIS, paragraph 113 and Exhibit 23.--

The following attributes may be recorded for each wetland point:

- NRCS wetland label
- acreage of the wetland, if known
- whether the wetland is certified or inventoried
- date certified.

421 Updating Aerial Imagery (Continued)

E NRCS Food Security Act Wetland Labels

The following table provides wetland determinations and labels (OW and NI are labels) that were used in the past or are currently used by NRCS for wetland determinations.

Wetland Code	Description
AW	Artificial or irrigation induced wetland.
AW/FW	Artificial or irrigation induced wetland and farmed wetland.
AW/W	Artificial or irrigation induced wetland and wetland.
CC	Commenced conversion exemption.
CMW	Categorical minimal effect.
CPD	COE Permit with Mitigation: A converted wetland authorized by a permit issued under Section 404 of the Clean Water Act. Production of agricultural commodities is allowed subject to conditions of the permit.
CW	Wetland converted between December 23, 1985, and November 28, 1990.
CW+Year	Wetland converted after November 28, 1990.
CWIL	Converted wetland payment in lieu. Wetland that is converted after February 7, 2014, with payment in lieu of mitigation (maintains RMA's federal crop insurance subsidy premium eligibility only).
CWNA	Wetland converted to other than agricultural commodity production.
CWTA	Converted wetland technical assistance. Wetland that is converted after February 7, 2014, because of the lack of timely assistance (maintains RMA's federal crop insurance subsidy premium eligibility only).
CWTE	Wetland converted or commenced based on an incorrect NRCS determination.
Easement	A wetland easement exists on the land.
FW	A farmed wetland that was manipulated and planted before December 23, 1985, but still meets wetland criteria.
FWP	Pasture or hayland converted before December 23, 1985, that still meets wetland criteria and is not abandoned.
MIW	A frequently cropped wetland area that is converted under an agreement that another wetland, which was converted before December 23, 1985, is restored to replace it. The restored area may be protected by an easement.
MW	Conversion activity was determined to have a minimal effect.
MWM	Minimal effect mitigation.
NI	Area that is not inventoried by NRCS.
NW	The field does not contain wetland.
NW/NAD	Nonwetland per national appeals decision.
OW	Other waters of the United States.
PC	Land converted before December 23, 1985, to make agricultural production possible.
PC/NW	Prior converted and nonwetland.

421 Updating Aerial Imagery (Continued)

E NRCS Food Security Act Wetland Labels (Continued)

Wetland Code	Description
TP	Wetland converted by a third party.
W	Wetland or wetland farmed under natural conditions and no drainage has occurred.
WX	Wetland manipulated after December 23, 1985, but agricultural production was not made possible.
GFW	CW that has been restored under the good faith provision.
GFW+Year	CW+Year that has been restored after 1990 under the good faith provision.
*--RCW	Relief Converted Wetland. A converted wetland granted relief in April 1992 by the Food Agriculture Conservation and Trade Act of 1990. Existing drainage systems can be maintained but not improved (designate as CWTE in GIS Wetland Point Layer).
RECW	Relief Exemption Converted Wetland. A converted wetland granted relief in April 1992 by the Food Agriculture and Trade Act of 1990; the wetland area beyond the lateral effect of the drainage system creating the conversion. Existing drainage systems can be maintained but not improved (designate as CWTE in GIS Wetland Point Layer).--*
RPW	A not frequently cropped wetland area that is converted to improve efficiency under an agreement that another wetland, that was converted before December 23, 1985, is restored to replace it.
RSW	A wetland area that was not converted between December 23, 1985, and November 28, 1990, that is restored to preconversion conditions. No violation by planting on the converted wetland has occurred.
RVW+Year	A wetland converted after December 23, 1985, on which NRCS determined a violation occurred and restoration to preconversion conditions has been completed.

422 Updating Tract Records

A Overview

Based upon the finalized NRCS determinations documented on NRCS-CPA-026 and aerial imagery, the County Office shall update the tract file according to * * * 10-CM. Conservation compliance tract files reflect:

- NRCS HEL determinations
- NRCS wetland determinations
- producer exemptions, such as good faith or landlord/tenant.

Although NRCS determinations are made at the field level, FSA maintains summarized data at the tract level.

Example: If at least 1 field within a tract has been determined to be HEL, the FSA tract file will indicate HEL for the tract.

B Tract HEL Selections

Tract records shall be updated according to * * * 10-CM using the following selections to record NRCS HEL determinations.

*--**Note:** Designation of “HEL, conservation system is **not** being applied” is only applicable if there is an NRCS FSA-569 confirmed HEL violation on a field(s) within the tract.--*

IF...	AND the producer certifies on AD-1026...	THEN select...
no HEL determinations have been completed on the tract		HEL determinations not complete.
at least 1 field on the tract has been determined non-HEL, but not all determinations have been completed		
at least 1 field on the tract has been determined HEL, but all determinations have not been completed	compliance with HELC and WC provisions	HEL, conservation system is being actively applied.
	noncompliance with HELC and WC provisions	HEL, conservation system is not being applied.
all HEL determinations are complete and the tract contains no HEL fields		classified as not HEL.
all HEL determinations are complete and the tract contains at least one HEL field	compliance with HELC and WC provisions	HEL, conservation system is being actively applied.
	noncompliance with HELC and WC provisions	HEL, conservation system is not being applied.

422 Updating Tract Records (Continued)

B Tract HEL Selections (Continued)

IF...	AND the producer certifies on AD-1026...	THEN select...
HEL determinations are either complete or incomplete for the tract, but an agricultural commodity is not being produced on the tract	compliance with HELC and WC provisions	HEL, conservation system is not required, no agricultural commodity.
producer has received an NRCS variance on former CRP land		HEL, producer has been granted 2 years to implement an approved conservation system on former CRP land.

C Recording HEL Field Determinations

Field determinations shall be recorded as an attribute of the CLU layer within GIS.

422 Updating Tract Records (Continued)

D Tract File Wetland Selections

Tract records shall be updated according to * * * 10-CM using the following selections to record NRCS wetland determinations.

IF...	THEN select...
wetland determinations have been completed for the entire tract and there are no AW/FW, AW/W, CC, CMW, CPD, CW, CW + year, CWIL, CWNA, CWTA, CWTE, Easement, FW, FWP, MIW, MW, MWM, NI, TP, W, WX, GFW, GFW + year, RPW, RSW, or RVW + year on the tract (determination(s) is/are AW, NW, NW/NAD, PC, or PC/NW)	tract does not contain a wetland. Note: If the AW, NW, NW/NAD, PC, or PC/NW determinations are not recorded with a certified wetland determination, then select “wetland determinations not complete”
wetland determinations have not been completed for the entire tract and there are no AW/FW, AW/W, CC, CMW, CPD, CW, CW + year, CWIL, CWNA, CWTA, CWTE, Easement, FW, FWP, MIW, MW, MWM, TP, W, WX, GFW, GFW + year, RPW, RSW, or RVW + year on the portion of the tract with NRCS determinations	wetland determinations not complete. Note: If any acreage is labeled with “OW” (other waters) the tract record should be recorded with this.
at least a portion of the tract has received an NRCS determination of AW/FW, AW/W, CC, CMW, CPD, CW, CW + year, CWIL, CWNA, CWTA, CWTE, Easement, FW, FWP, MIW, MW, MWM, TP, W, WX, GFW, GFW + year, RPW, RSW, or RVW + year	tract contains a wetland or farmed wetland.

Wetland determinations resulting in a “tract contains a wetland or farmed wetland” designation in the tract file, are those that may have an impact on producer eligibility if manipulated and/or planted.

NRCS wetland determinations shall be documented in the county GIS. CLU’s within GIS include wetland attributes determined by NRCS.

Example: PC, AW, etc.

423-438 (Reserved)

Section 3 Providing Producer Record Changes to NRCS

439 NRCS Requested Information

A Providing NRCS Requested Information

If requested by NRCS, County Offices shall provide a copy of FSA-156EZ and, when applicable, a copy of the appropriate reconstitution report for a farm when changes in 1 or more of the following records are made:

- owner
- operator
- tract division
- farm division
- farm combination.

Note: Only provide NRCS with FSA-156EZ printed for changes listed in this paragraph.

B Referring Tract Changes to NRCS

Use the following table as a guide to refer tract data changes to NRCS.

Step	Action
1	Print FSA-156EZ file according to * * * 10-CM.
2	Make a copy of the prior FSA-156EZ on file.
3	Highlight the following old and new changes on FSA-156EZ: <ul style="list-style-type: none"> • name and address of the operator of the farm • last 4 digits of the operator’s ID number • tract number or numbers for the farm • owner of the tract or tracts. <p>Note: Manually enter the type of change and the date record was updated.</p>

439 NRCS Requested Information (Continued)

B Referring Tract Changes to NRCS (Continued)

Step	Action	
4	IF a change in producer records...	THEN...
	does not involve a reconstitution involves a reconstitution	forward FSA-156EZ's to NRCS. <ul style="list-style-type: none"> • access the Reconstitution Reports Menu according to 2-CM • select the appropriate reconstitution report • highlight the following applicable changes: <ul style="list-style-type: none"> • type of reconstitutions • parent farm number • parent tract number • resulting tract numbers • attach to corresponding FSA-156EZ.

Note: It is important that County Offices explain the changes reflected on these reports to NRCS.

440-499 (Reserved)

Part 5 Compliance Checks and FSA-569

500 Compliance Checks of AD-1026 Certifications

A NRCS Compliance Checks

NRCS completes a status review each year on a representative sample of tracts to determine whether the producer is actively applying the approved conservation plan or system on HEL and field review of WC compliance. Policy for these tract selections is in NRCS' National Food Security Act Manual. All benefits subject to conservation compliance (that is, FSA farm loans, FSA farm programs, NRCS programs, and premium subsidy to Federal crop insurance administered by RMA) provide benefits data to FSA to create the universe of tracts. NRCS makes the random selection based off that universe.

B FSA Compliance Reviews

Potential noncompliance may be identified by FSA while conducting activities (for example, acreage reporting).--*

If potential noncompliance with HELC or WC provisions is observed, prepare FSA-569 for referral to NRCS according to paragraph 501.

501 Request for NRCS Compliance Check Using FSA-569

A When to Use FSA-569

FSA County Offices shall prepare FSA-569 when FSA or NRCS has reason to believe, or whistleblower reports, that a noncompliance of HELC or WC provisions has occurred.

B FSA-569 Requirement for Ineligibility Determinations

Under no circumstances shall FSA deny benefits to a producer for HELC or WC *--noncompliance in a crop year for which AD-1026 continuous certification is “certified” unless FSA-569 is received from NRCS to confirm the NRCS final technical determination of noncompliance for the applicable crop year.

For producers with past violations that certify in a subsequent crop year, FSA-569 must be generated to confirm the producer has met all requirements to be in compliance from their prior violation before recognizing them as “certified”.--*

C HELC Tract Records Show Noncompliance

FSA tract records for HEL may indicate noncompliance if NRCS determined the conservation plan or approved conservation system was **not** actively applied in a prior year. In those circumstances, FSA-569 may **not** be on file with the noncompliance determination from NRCS for the current year.

If a producer who is **not** exempt according to this handbook files an AD-1026 certification for a tract that shows noncompliance, but FSA-569 is **not** on file for the crop year entered on AD-1026:

- send FSA-569 to NRCS to make a compliance determination on the tract for the crop year for which AD-1026 is filed
- notify the producer that:
 - HELC compliance requirements were **not** met on HEL on the tract according to records received from NRCS
 - eligibility for program benefits that are subject to HELC provisions will be denied unless NRCS changes their determination.

Note: In most cases, the producer will either resolve prior year HELC noncompliance determinations with NRCS **before** signing AD-1026 or decide **not** to sign AD-1026. Take no action if AD-1026 is **not** signed.

501 Request for NRCS Compliance Check Using FSA-569 (Continued)

D FSA-569 for HELC Spot Checks

--Prepare FSA-569 to check for potential noncompliance if any producer on the farm is “certified” for AD-1026 for the crop year and planted agricultural commodities (crops requiring annual tillage, including one pass planting operations and sugar cane) on:--

- land for which a HEL determination has **not** been made
- HEL without applying practices required by an approved conservation plan.

Note: FSA-569 shall also be prepared according to subparagraph F if NRCS requests FSA-569.

E FSA-569 for WC Spot Checks

Prepare FSA-569 if a suspected WC noncompliance has occurred according to the following table.

Note: If NRCS requests FSA-569:

- the following table does **not** apply
- FSA-569 shall be prepared according to subparagraph F.

IF the suspected WC noncompliance is...	AND an effective AD-1026 is...	THEN...
planting an agricultural commodity on a converted wetland	on file for any producer on the farm for the crop year	prepare FSA-569 for referral to NRCS.
	not on file for any producer on the farm for the crop year	FSA-569 shall not be prepared.
converting a wetland after November 28, 1990	on file for any producer on the farm for the crop year	prepare FSA-569 for referral to NRCS.
	not on file for any producer on the farm for the crop year	FSA-569 shall be: <ul style="list-style-type: none"> • clearly marked “NONPARTICIPATING PRODUCER” at the top of FSA-569 • prepared for referral to NRCS.
planting an agricultural commodity on WX (wetland was manipulated after December 23, 1985, but agriculture production was not made possible)	on file for any producer on the farm for the crop year	prepare FSA-569 for referral to NRCS.
	not on file for any producer on the farm for the crop year	FSA-569 shall not be prepared.

501 Request for NRCS Compliance Check Using FSA-569 (Continued)

F FSA-569’s Requested by NRCS

To ensure an organized and uniform method of recording HELC and WC noncompliance between FSA and NRCS, NRCS uses FSA-569 to notify FSA of HELC or WC noncompliance discovered by NRCS.

FSA-569 shall be prepared according to the following table **if** NRCS requests FSA-569.

Step	Agency	Action
1	NRCS	Request FSA to prepare FSA-569 for farms for which noncompliance is discovered by NRCS.
2	FSA	Complete FSA-569, Part A for the crop year requested by NRCS according to subparagraph 502 B.
3	FSA	*--Identify the area for which the determination is made on FSA’s map and CLU within HELC/WC CD tracker to be referred with FSA-569.--*
4	NRCS	Record the NRCS determination on FSA-569, Part C, and return to FSA after the NRCS technical determination is final according to subparagraph 502 E.

G FSA-569 and AD-1026, Box 5B

A producer certifying to conservation compliance on AD-1026 may check box 5B if all 3 parameters are met:

- does not participate in any USDA program that is subject to HELC and WC compliance except Federal Crop Insurance
- only has interest in land devoted to agriculture which is exclusively used for perennial crops (except sugarcane)
- has not converted a wetland after February 7, 2014.

Producers in this situation may not have full farm records established according to subparagraph 641 D. FSA-569 still must be requested if a suspected violation from FSA or NRCS is detected, or a whistle blower complaint is filed.

Prepare FSA-569 with “NA” (not applicable) for farm and tract information. Contact FSA State designated POC for RMA (4-RM, Exhibit 11). State designated POC’s shall work with their RMA POC to obtain RMA acreage reporting information to determine producer information and location. Once this has been obtained from RMA, fill in producer information and mark the area for which the determination is made on two FSA aerial copies. Attach to FSA-569 according to subparagraph 502 D, and forward to NRCS.

502 Completing FSA-569 (Continued)

B Completing FSA-569, Part A (Continued)

Item	Instruction	Responsibility
9	<p>Enter the names, addresses, and last 4 digits of IRS ID numbers *--for the crop year entered in item 7 of the:--*</p> <ul style="list-style-type: none"> • operator and tenants or sharecroppers recorded for the farm number entered in item 6 • owners recorded for the tract number entered in item 8. <p>Notes: Ensure that all entries are complete according to FSA records. NRCS will use this information to notify producers of appeal rights when noncompliance is discovered.</p> <p>*--For FSA-569’s returned by NRCS with “The area identified is a wetland that was converted after 11/28/90” in Part C, the year of the conversion must be checked to ensure owners and operators of record in Part 9 match the year of conversion. If they do not match, issue another FSA-569 with owners and operators of record applicable to the conversion year.--*</p>	FSA
10	<p>NRCS will enter the date that the NRCS technical determination is final when Part C indicates that noncompliance has occurred. This item will be blank when FSA-569 is initially referred to NRCS.</p> <p>Note: Item 10 is completed only when NRCS has determined noncompliance. If Part C indicates noncompliance, do not accept FSA-569 from NRCS until item 10 indicates that the NRCS technical determination is final for all producers.</p>	NRCS
11	FSA County Office representative who prepares FSA-569 shall sign after Part B is completed.	FSA
12	Enter the date FSA-569 is referred to NRCS for a determination.	

502 Completing FSA-569 (Continued)

C Completing FSA-569, Part B

FSA shall complete FSA-569, Part B according to the following table for referral to NRCS.

IF the suspected noncompliance is...	THEN check (✓) block number...
planting an agricultural commodity on: <ul style="list-style-type: none"> • HEL where producer is not using an approved conservation system • land for which a HEL determination has not been made • HEL without applying the practices required by an approved conservation plan 	1.
planting an agricultural commodity on a wetland that was CW <p>Note: NRCS shall verify that planted areas indicated on aerial photography are CW. NRCS shall provide the producer with appeal rights if the CW determination was not previously appealed with a final decision rendered. Do not make producer ineligibility determinations until FSA-569 is returned by NRCS, and the NRCS technical determination is final.</p>	2.
converting a wetland after November 28, 1990 <p>Note: If no producer on the farm filed AD-1026 for the crop year, clearly write "NONPARTICIPATING PRODUCER" at the top of FSA-569.</p>	3.

D * * * Referral to NRCS

*--Initiate the referral in the Conservation Desktop production site (user guide and training materials posted in the training SharePoint at [FPAC-FSA-DAFP - Training Presentations - By Program Area and Program \(sharepoint.com\)](#), Program Area - "Common", - Program "HELWC/WC". Access within FSA applications:

- | |
|--|
| <ul style="list-style-type: none"> ☆ Conservation Desktop HELC/WC Tracker Tool ☆ Conservation Desktop HELC/WC Tracker Tool Training Site |
|--|

--*

502 Completing FSA-569 (Continued)

E NRCS Action on Referred FSA-569's

NRCS shall complete FSA-569, Part C according to the following table for determinations checked in FSA-569, Part B.

Step	Instructions for NRCS	
1	IF...	THEN...
	access to the land was denied	NRCS employee shall: <ul style="list-style-type: none"> • check (✓) the block in Part C to indicate that NRCS was refused access to the land to verify compliance • complete step 5 and immediately refer FSA-569 to FSA.
	NRCS is allowed to complete determinations checked in Part B	
2	Check the final NRCS determination in Part C, item 1.	
3	Enter the field numbers for which the determination applies in Part C, item 2.	
4	Enter the acres for which the determination applies in Part C, item 3.	
5	NRCS employee shall: <ul style="list-style-type: none"> • refer FSA-569 to FSA according to paragraph 501 • sign and enter the referral date in Part C, item 4 before referring to FSA. 	

502 Completing FSA-569 (Continued)

F NRCS Determinations for FSA-569 Requests

Take action according to the following table for determinations made by NRCS for FSA-569 requests.

Reconsideration, appeal, and mediation procedures for adverse determinations are in *--1-APP. Appeals to COC of NRCS technical determinations from AD-1026 or FSA-569 referrals, as discussed in subparagraph 357 A and subparagraph D, must be notated by FSA in Conservation Desktop HELC/WC Tracker Tool.--*

IF NRCS determines...	AND...	THEN...
HELCS compliance is met		update automated tract record according to * * * 10-CM.
the area identified for verification of whether an agricultural commodity was planted on CW is determined not to be CW		
the area is not a wetland that was converted after November 28, 1990		
HELCS compliance is not met	the field is not planted to an agricultural commodity	refer FSA-569 back to NRCS to change their determination because HEL fields that are not planted to agricultural commodities do not require compliance with a conservation plan or system. Note: This does not apply if NRCS informs FSA the field is used to produce agricultural commodities and is required to have perennials within the conservation cropping sequence to meet a conservation system.
	the field is planted to an agricultural commodity Note: This includes the fallow year for fields in a fallow rotation.	<ul style="list-style-type: none"> NRCS will issue a preliminary technical determination to producers, and submit a copy to FSA FSA will determine producers who will be ineligible and to what extent according to Part 6
the area identified for verification of whether an agricultural commodity was planted on CW is determined to be CW	the NRCS technical determination is final	<ul style="list-style-type: none"> NRCS will hold FSA-569 until the NRCS technical determination becomes final. On the date the determination is final, NRCS will enter the date in item 10 and sign and date FSA-569, Part C, item 4 and refer to FSA for denial of benefits
the area is a wetland that was converted after November 28, 1990		<ul style="list-style-type: none"> FSA will immediately begin withholding benefits when NRCS reports the technical determination is final.
access to the land was denied for making a compliance determination		take action according to paragraph 503.

503 NRCS Denied Access to Determine Compliance

A Access Requirement

7 CFR Section 12.7 states the following, *“In order for a person to be determined to be eligible for any of the benefits specified in Sec. 12.4: . . .(5) The person applying for the benefits must authorize and provide representatives of USDA access to all land in which such person has an interest for the purpose of verifying any such certification”*

The statement, “Signature on Form AD-1026 gives representatives of USDA authorization to enter upon and inspect all farms in which the producer has an interest for the purpose of confirming the above statements”, is provided on AD-1026. Therefore, by signing AD-1026, the producer authorizes the required access.

B Determining Producers Ineligible

If NRCS reports on FSA-569 that NRCS was refused access to the land to determine compliance:

- all producers who must meet HELC and WC compliance requirements on the land for which access is denied and their affiliated persons shall be determined ineligible for benefits

Note: RMA ineligibility applies the immediate next reinsurance year (determined the first June 1 after denied access).

Example 1: FSA-569 created for crop year 2017 on March 30, 2017, returned no access in April 2017. The first June 1 is June 1, 2017, and RMA ineligibility would begin reinsurance year 2018.

Example 2: FSA-569 created for crop year 2017 on July 30, 2017, returned as no access in September 2017. The first June 1 is June 1, 2018, and RMA ineligibility would begin reinsurance year 2019.

- notify all affected producers of their ineligibility because of refusal of access to their land by NRCS, and provide appeal rights
- AD-1026 on file is considered revoked for year in item 7 of the FSA-569 and each subsequent year
- change the certification option for AD-1026 in subsidiary eligibility to “Not Filed” according to 3-PL (Rev. 2) for all affected producers for each applicable year(s).

503 NRCS Denied Access to Determine Compliance (Continued)**C Regaining Eligibility**

Any producer determined ineligible as a result of refusing access to land to determine compliance must allow access and file a new AD-1026 to regain eligibility. If it is not possible for NRCS to determine eligibility for year(s) that access was denied (for example, denied access during HEL compliance reviews), the producer becomes eligible the first subsequent year after access is allowed and NRCS can confirm conservation compliance.

504 Pending FSA-569 Determinations***--A Pending FSA-569 Determinations Monitoring**

Monitor FSA-569's that have been referred within Conservation Desktop to NRCS for determinations. To avoid unnecessary delays and maintain communication between FSA and NRCS about compliance determinations to be made, on the first week of each month:

- submit to NRCS outstanding FSA-569's for which FSA has **not** received a final NRCS technical determination (preliminary determination statuses will become technically final within 30 calendar days if there is not a request for reconsideration)
- request that NRCS respond with the current status of the pending determinations with no preliminary determination status.

B Reports to Ensure Joint Agency Coordination

State Office will use reporting features within Conservation Desktop HELC/WC tracker tool to monitor any FSA-569's for which NRCS has **not** made the preliminary technical determination within 60 calendar days after FSA-569 was referred to NRCS.

State Offices will:

- attempt to resolve with NRCS at the State level any reported delays in making preliminary technical determinations
- report to national conservation compliance manager if unreasonable delays for--* making a preliminary technical determination for FSA-569's that were referred cannot be resolved with NRCS.

602 Determining Producers Who Are Ineligible (Continued)

A Determining Ineligibility for HELC or WC Planting Violations (Continued)

IF the producer's status on the farm is...	AND the crop planted on the land with the violation is...	THEN the producer shall be...
landlord, who is not the operator	cash rented and not shared by the landlord	<p>ineligible for USDA benefits subject to the provisions of this handbook on lands and warehouses where the landlord and violating operator, tenant or sharecropper, or their affiliated persons are involved.</p> <p>Note: The landlord could be eligible for USDA benefits on the farm where the violation occurred, if the landlord is share-renting a part of the farm with another tenant or sharecropper, provided a landlord exemption is approved on AD-1026C according to paragraph 603.</p>
either of the following: <ul style="list-style-type: none"> • tenant • sharecropper 	shared by either of the following: <ul style="list-style-type: none"> • tenant • sharecropper 	<p>ineligible for USDA benefits subject to the provisions of this handbook on:</p> <ul style="list-style-type: none"> • all lands • any warehouse in which the tenant or sharecropper has an interest. <p>Note: This includes cases where it is determined that the tenant or sharecropper planted an agricultural commodity on predominately HEL or converted wetland, or converts a wetland under the terms and conditions of an agreement between the landlord and the tenant or sharecropper.</p> <p>Exception: If a tenant exemption has been approved according to paragraph 604, the producer shall be ineligible only on the farm for which an exemption was approved.</p>
	not shared by either of the following: <ul style="list-style-type: none"> • tenant • sharecropper 	<p>able to remain eligible for USDA benefits subject to the provisions of this handbook on:</p> <ul style="list-style-type: none"> • all lands • any warehouse in which the tenant or sharecropper has an interest.

602 Determining Producers Who Are Ineligible (Continued)

B Determining Ineligibility for WC Conversion Violations

Any person who is determined responsible for converting a wetland for the purpose, or which has the effect, of making the production of an agricultural commodity possible, shall be ineligible for all USDA benefits.

*--Converted wetland violations remain within applicable farm records until restored or mitigated. Therefore, producers that come onto the farm record, after the year of the conversion, are communicated eligible with the farm/tract producer exception of “new producer after CW”(see 10-CM, paragraph 26). However, they realize a planting violation any year they may be associated to planting an agricultural commodity on the converted wetland acreage within the parameters of subparagraph A.

Note: The operator of a farm is considered to be in general control of the farm and, therefore, shall also be included as a person determined responsible for converting a wetland, if operator within the conversion year, unless relief is approved by--* DAFP according to subparagraph C.

C Requesting Relief for Operator of Farm With Wetland Conversion

As indicated in subparagraph B, the farm operator is considered to be in general control of that farm. Therefore, the operator of a farm with a wetland conversion is included as being responsible for a wetland conversion occurring during the time he or she is the designated farm operator. However, if there are circumstances that may warrant relief for the farm operator, relief may be requested from DAFP according to the following table.

IF...	THEN...
COC determines that the farm operator: <ul style="list-style-type: none"> • was in no way responsible for the wetland conversion • had no control over the wetland conversion activities 	COC shall forward a recommendation for relief to STC. <p>Notes: Any relief under this subparagraph does not relieve the farm operator from ineligibility as the result of planting on a converted wetland. The conversion of a wetland and the planting of an agricultural commodity on a converted wetland are 2 separate violations.</p> <p>See paragraph 637 for possible reduction in ineligibility for a planting violation if the operator is unable to mitigate a wetland conversion to meet the requirements for relief under the Good Faith Relief exemption.</p>
STC concurs with COC recommendation	State Office shall forward the case file to DAFP for a decision.
STC does not concur with COC recommendation	the operator shall be ineligible for relief under this subparagraph.

Note: Operators approved for this relief will have their CW farm producer exception set to “no association to violation”.

602 Determining Producers Who Are Ineligible (Continued)

D Group Wetland Projects

The activities of a Water Resource District Board or similar entity will be attributed to the persons in the district who are assessed for the activities of the Water Resource Board or similar entity.

Example: If a Water Resource District Board constructs a drainage ditch, and a person's wetland is therefore converted, the person is considered to have caused or permitted the drainage. See subparagraph 218 B for producer eligibility requirements on land converted by a drainage district or similar entity.

***--E Extent of Ineligibility of Affiliated Violations**

The extent of ineligibility is determined according to this paragraph, for a producer who violated, resulting in an affiliate violation to their affiliates, as determined in paragraph 302. If the affiliate does not have a farming interest at the time of the violation, but a farming interest comes to fruition while the violation is still applicable, the resulting affiliate violation is also applicable.--*

Exception: Business enterprises with members or shareholders who violate the benefits of the affiliated business enterprise must be reduced in proportion to the interest held in the business enterprise by the violating member or shareholder.

Example: Member A, who owns 25 percent of the shares in Corporation A, violates on his or her individual operation. Member A is ineligible for benefits. Benefits to affiliated person Corporation A must be reduced by 25 percent.

Currently there is not an automated process to make a percentage of an entity ineligible for those situations when a member of an entity violated HELC/WC provisions. Therefore, County Offices must multiply the percentage of the violating member's share of the entity by the amount of the payment. The nonautomated program code of XXAPPR (affiliated *--person payment reduction) must be used to reduce or collect back the payment. The producer must remain "certified" for AD-1026 to implement the partial ineligibility from affiliate violations. NRCS must be notified of producers in partial ineligibility from the provisions of this subparagraph.--*

RMA SBI file has any member listed that has more than a 10 percent interest in the primary insured, but it does not have specific members' shares when an entity is the primary insured. In addition, CCC-901 may not be on file for these entities if they are only seeking RMA benefit. If a member of an entity is determined in violation, resulting in an affiliate violation to the insured entity, CCC-901 must be filed for a determination on this extent of ineligibility to be made for the reinsured crop insurance premium subsidy. If it is not filed, extent of ineligibility results in 100 percent ineligibility.

602 Determining Producers Who Are Ineligible (Continued)

--F Updating Eligibility Record for Affiliated Persons in Affiliate Violation--

If a producer is determined to be ineligible for program benefits because the producer is an affiliate of a producer who has violated the HELC/WC program provisions, update the *--AD-1026 web-based subsidiary to “affiliate violation” (exception in subparagraph E). If the affiliate violation is applicable to RMA, update the AD-1026 web-based subsidiary according to subparagraphs 207 C, 207 E, 231 B, 232 D, 233 C, and 601 B (“yes,” meaning the affiliate violation is applicable to RMA, “no,” meaning it is not).--*

603 Landlord Exemption – HELC or WC Planting Violation**A Landlord Exemption Rule**

Ineligibility of a tenant or sharecropper for benefits shall **not** cause a landlord to be ineligible for program benefits on land other than land in which the violating tenant or sharecropper has an interest.

The landlord exemption shall **not** apply if the production of an agricultural commodity on HEL or converted wetland is required under the terms and conditions of an agreement between the landlord and tenant or sharecropper.

Following are landlord exemption provisions for Federal Crop Insurance participants.

- The premium subsidy shall be reduced rather than a loss of all premium subsidy.
- The percentage reduction will be determined by comparing the total number of cropland acres on the farm where the violation occurred to the total number of cropland acres on all farms in which the landlord (as owner or operator) has an interest.
- The percentage reduction will be applied to all policies and plans of insurance of the landlord in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.
- If the landlord and tenant or sharecropper are insured under the same policy (as determined by RMA), the landlord will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.
- Is only applicable to planting violations on converted wetlands determined $CW \geq 2014$.

Note: All references to landlord exemptions in this handbook shall also include landowners.

603 Landlord Exemption – HELC or WC Planting Violation

B When Landlord Exemption Applies

The landlord exemption shall be applied according to AD-1026C, page 2. See subparagraph G.

Note: A landlord who converts a wetland on or after November 28, 1990, does **not** qualify for a landlord exemption, but may still maintain eligibility for federal crop insurance premium subsidies if converted through February 7, 2014.

C Updating Eligibility Record

If a producer is granted an exemption under the landlord exemption rule, update the “HELC Producer Exception” field for the farm or tract, as applicable, according to * * *10-CM by selecting “Landlord/Tenant” from the drop-down box.

604 Tenant HELC Exemption – Landlord Refusal (Continued)

N AD-1026B Process

The following table shows the process for filing and notifications for AD-1026B.

IF...	AND...	THEN the State or County Office receiving AD-1026B shall...
a producer requests HELC exemption	AD-1026B, Part A is completed	<ul style="list-style-type: none"> • file a copy in a pending file • provide original AD-1026B to NRCS.
NRCS returns AD-1026B	AD-1026B, Part B is completed by NRCS	<ul style="list-style-type: none"> • destroy copy in the pending file • have COC review the request.
COC documents determination in AD-1026B, Part C	STC determination is not required	<ul style="list-style-type: none"> • notify producer of the determination • provide copy of completed AD-1026B to the State Office • provide copy of AD-1026B to the recording County Office for multi-county producers • attach original AD-1026B to NRCS-CPA-026e • attach copy of AD-1026B to AD-1026. <p>Note: If the County Office receiving AD-1026B is the recording County Office, verify the answer in AD-1026, item 6.</p>
	STC determination is required	<ul style="list-style-type: none"> • file a copy in a pending file • mail original AD-1026B to the State Office.

604 Tenant HELC Exemption – Landlord Refusal (Continued)

N AD-1026B Process (Continued)

IF...	AND...	THEN the State or County Office receiving AD-1026B shall...
County Office receives AD-1026B from the State Office	AD-1026B, Part D is completed	<ul style="list-style-type: none"> • destroy copy in the pending file • notify producer of the determination • provide copy of completed AD-1026B to the State Office • provide copy of AD-1026B to the recording County Office for multi-county producers • attach original AD-1026B to NRCS-CPA-026e.
State Office receives copy of AD-1026B	STC determination is required in AD-1026B, Part D	<ul style="list-style-type: none"> • document STC determination on the bottom of AD-1026 • file a copy in a pending file • mail original to the County Office.
	<ul style="list-style-type: none"> • determination is final • producer has been notified 	<ul style="list-style-type: none"> • destroy pending copy, if previous STC determination was made • copy completed AD-1026B, which is Report PA-124R, and file • e-mail to the National Conservation Compliance Program Manager, a copy of AD-1026B.
recording County Office receives copy of AD-1026B	producer has not filed AD-1026	place AD-1026B in the producer’s file to be attached to AD-1026 when it is filed.
	producer has filed AD-1026	attach AD-1026B to AD-1026, and verify the answer in AD-1026, item 6.

O Updating HEL Field for Farm or Tract

If a producer is granted an exemption on AD-1026B, update the HEL field for the farm or tract, as applicable, by selecting “Landlord/Tenant” from the drop-down box according to * * * 10-CM.

605 Applying Landlord/Tenant Exemption Rules

A Background

When either the Landlord Exemption or Tenant HELC Exemption is approved according to paragraph 603 or 604, ineligibility for the producer is limited to specific farms on which the producer is considered to be in violation. If a benefit is **not** farm-specific, it will be more difficult to determine for what portion of benefits a producer is ineligible.

B When to Apply Nonfarm or Crop Specific Rules

The rules in this paragraph shall be applied only to producers who meet **all** of the following conditions:

- requesting benefits that are **not** farm-specific
- violated HELC or WC provisions
- exempted from ineligibility on farms **not** in violation of HELC or WC provisions because of the Landlord Exemption or Tenant HELC Exemption according to paragraph 603 or 604.

C Benefits for Which Producer Is Ineligible

Producers approved for a Landlord Exemption or Tenant HELC Exemption shall be ineligible for:

- any program benefits specifically associated with the ineligible farm
- any proportion of benefits based on acreage or livestock maintained on the ineligible farm.

Example: Producer A owns FSN 200 and rents FSN 100. Producer A violated HELC provisions on FSN 100, but was approved under the Tenant HELC Exemption so benefits could be earned on FSN 200.

If Producer A located beehives on FSN 100, the honey produced from the beehives during the crop year in violation would be ineligible for benefits.

If Producer B, who does **not** have an interest in FSN 100, places beehives on that farm, Producer B will be eligible for honey benefits if all other provisions are met.

606 Notifying Producers of Ineligibility Determinations**A When to Notify Producers**

Producers shall be notified of the ineligibility determination, and benefits shall be denied, when FSA-569 is returned from NRCS to verify that the NRCS technical determination is final.

Note: Update the eligibility file according 3-PL (Rev. 2) and farm records according to * * *10-CM.

B Who Notifies Ineligible Producers

The County Office with administrative responsibility for the land in violation where the violation occurred shall notify and provide appeal rights to the following:

- each ineligible producer on the farm determined according to paragraph 602
- each affiliated person who is determined ineligible according to paragraph 602.

C Information for Notifying Participating Producers

The notification of ineligibility to participating producers shall include the following:

- an explanation of the violation determination, including the following:
 - statement of the program rules that apply
 - facts in the case that resulted in violation of these rules
- affiliated persons who are affected by the violation
- whether the ineligibility applies to all lands, or only land where the violating tenant, sharecropper, or operator is involved
- appeal rights to COC in the producer's recording FSA County Office
- good faith relief provisions for inadvertent HELC and WC violations.

***--611 Tenant/Sharecropper Exemption (Planting Violation on Converted Wetland ≥ 2014)
(Continued)**

E Example of AD-1026E (Continued)

AD-1026E (07-13-16)		Page 2 of 2
PART D – RULES FOR APPLYING TENANT/SHARCROPPER INELIGIBILITY		
13. IF ITEM 10B IS CHECKED, USE THIS TABLE TO DETERMINE PRODUCER INELIGIBILITY FOR REINSURED CROP INSURANCE PREMIUM SUBSIDY.		
IF the producer's status on the violating farm is...	AND if the crop planted on the land with the violation.....	THEN the....
tenant or sharecropper, who is operator	is cash rented or shared	tenant shall be ineligible for all premium subsidies in proportion to the percentage reduction figured in 7. If the landowner and tenant or sharecropper are insured under the same policy (as determined by RMA), the tenant or sharecropper will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.
landlord	is shared	landlord shall be ineligible for all premium subsidies.
landlord	is cash rented	landlord is not held responsible for the planting violation (their eligibility/ineligibility hinges on the conversion).
PART E – TO BE COMPLETED BY COC (Continued from Page 1, Part C)		
14. DESCRIBE THE REASONS FOR THE COC DETERMINATION. (If necessary, attach additional sheet and check this box <input type="checkbox"/>).		
15A. SIGNATURE OF COC	15B. DATE (MM-DD-YYYY)	

--*

611 Tenant/Sharecropper Exemption (Planting Violation on Converted Wetland ≥ 2014)
(Continued)

--F Entries Required on AD-1026E--

Complete AD-1026E according to the following table.

Item	Instructions	Responsibility
1A	Enter State name and code.	County Office and Producer
1B	Enter county name and code.	
Part A – Producer’s Information		
2	Enter producer’s name and address	
3	Enter producer’s telephone number.	
4	Enter last 4 digits of producer’s tax ID number.	
5A	Enter farm number on which the tenant or sharecropper has planting violation.	
5B	Enter tract number on which the tenant or sharecropper has planting violation.	
6	Enter crop year of the violation.	
7A	Enter cropland acres of the farm in 5A.	
7B	Enter all cropland acres the tenant or sharecropper has interest in as owner or operator.	
7C	Divide 7A/7B to determine percentage reduction. Example: 7A = 100 acres, 7B = 1000 acres, percentage reduction = 10%	
Part B – Tenant or Sharecropper’s Certification		
9A 9B 9C	Tenant, sharecropper, or representative who is requesting an exemption shall sign and date.	
Part C – To Be Completed by COC		
10A	Check if COC has determined that the producer’s certification is not valid.	COC
10B	Check if COC has reason to believe the producer’s certification is valid.	
11	Enter reason the request was approved or disapproved.	
12A and 12B	COC shall sign and date.	

--*

612-615 (Reserved)

Subsection 1 Good Faith Relief for HELC Violations

621 Good Faith Relief Provisions and Requests – HELC

A Good Faith Relief Provisions

A producer who is determined ineligible as the result of a violation of HELC provisions may regain eligibility for the crop year in violation if all of the following conditions are met:

- the producer requests good faith relief using AD-1068
- COC determines that the producer acted in good faith and without intent to violate HELC provisions
- ~~SED, or DD if authority is delegated with SED documentation, reviews and concurs--*~~ with COC's determination (review and concurrence required for COC approvals only)

Note: If COC, DD, or SED, does **not** approve the producer's request for good faith relief, the producer must be notified with applicable appeal rights according to 1-APP.

- State Conservationist, or Area Conservationist if authority is delegated, provides technical concurrence based on a review of the proposed conservation plan and the factors used to determine GPR
- the producer agrees to implement the practices according to a conservation plan within an agreed period determined by NRCS, **not** to exceed 1 year
- GPR is assessed according to subparagraphs E and F.

Note: If NRCS determines the producer failed to implement practices within 1 year or the producer does not pay assessed GPR according to subparagraph J, notify producer that the good faith is rescinded and request a refund of benefits reinstated.

B Making a Request for Good Faith Relief

Requests for a good faith determination for HELC violations shall be made, in writing, by each producer who wants to regain eligibility for benefits that were or may be denied as the result of HELC violation or potential violation. The request shall include the following:

- circumstances surrounding the violation or potential violation
- any evidence indicating the activity was conducted in good faith, and **not** as a scheme or device to avoid compliance.

Note: Do either of the following:

- attach the producer's signed and dated request to AD-1068 for processing
- have the producer write the request on AD-1068.

621 Good Faith Relief Provisions and Requests – HELC (Continued)**C Where to Make a Good Faith Relief Request**

Producer shall file a good faith relief request with COC for the county where the farm with the HELC violation is located for program administration purposes.

D Information Required From NRCS for Determining Good Faith

NRCS shall provide the following information to COC on AD-1068 for making a determination:

- any facts about the case that may affect the COC determination
- copies of documents containing pertinent information about the case, such as NRCS notification to the producer about their determination
- whether the producer obtained or attempted to obtain a conservation plan for the land in a timely manner
- whether there was any face-to-face discussion with the producer concerning the violation
- whether the landlord attempted to work with NRCS in developing a conservation plan that could be actively applied by the producer
- information about the violation and the erodibility index of each field in violation
- characteristics of the field and whether the producer should have known that the field was HEL and/or was subject to gully erosion
- whether the participant had been provided a previous determination and/or conservation plan, and made a good faith effort to comply
- whether there is evidence of intent to violate HELC provisions.

Subsection 2 Good Faith Relief for WC Violations

631 Good Faith Relief Provisions and Requests – WC

A Good Faith Relief Provisions

A producer who is determined ineligible as the result of a violation of WC provisions may regain eligibility for the crop year in violation if **all** of the following conditions are met:

- the producer requests good faith relief using AD-1069
- COC determines that the producer acted in good faith and without intent to violate WC provisions
- ~~SED, or DD if authority is delegated with SED documentation, reviews and concurs--*~~ with COC's determination of good faith (COC determination of no good faith do not require SED or DD review)
- State Conservationist, or Area Conservationist if authority is delegated, provides technical concurrence based on a review of the proposed mitigation plan
- the producer agrees to implement the measures and practices necessary to be considered to be actively restoring the subject wetland within an agreed period determined by NRCS, not to exceed 1 year for FSA and NRCS benefits and 2 reinsurance years for the federal crop insurance premium subsidy.

No payment reduction shall apply for producers who meet the good faith relief requirements for a WC violation.

Note: See paragraph 637 for reducing the payment ineligibility for producers who are unable to restore or mitigate the converted wetland, but acted in good faith without the intent to violate WC provisions (applicable only to planting on converted violations).

B Requests for Good Faith Relief

Requests for good faith relief for WC violations shall be made, in writing, by the producer. The request shall include the following:

- the circumstances surrounding the violation
- any evidence indicating that the violation was in good faith and without intent to violate WC provisions, and **not** as a scheme or device to avoid compliance.

Note: Either have the producer provide the request in AD-1069, Part A or attach the producer's request to AD-1069 for processing.

631 Good Faith Relief Provisions and Requests – WC (Continued)

C Where to Make a Good Faith Relief Request

Producers shall file good faith relief requests with COC for the county where the farm with the WC violation is located for program administration purposes.

D Information Required From NRCS and SWCD for Determining Good Faith

NRCS shall provide the following information to COC on AD-1069 for making a determination:

- any facts about the case that NRCS or SWCD has that may affect COC’s determination
- copies of documents containing pertinent information about the case that provide facts and details that may affect COC’s good faith decision, such as NRCS’ notification to the producer about their determination
- whether the producer was officially informed of the wetland determination made by NRCS
- whether there was any face-to-face discussion with the producer about the wetland, before the violation occurred
- whether NRCS has knowledge that the producer was involved in a previous WC issue
- characteristics of the site before the conversion occurred.

E Making Good Faith Determinations

COC shall determine whether the producer acted in good faith and without intent to violate WC provisions, based on information:

- provided by the producer
- provided by NRCS on AD-1069
- COC may have concerning the circumstances in the case.

F Adverse Determinations

*--If COC, SED or DD does **not** approve the good faith determination, the producer shall be--
* provided appeal rights according to 1-APP.

If the NRCS State or Area Conservationist does **not** provide technical concurrence, the mitigation plan shall be returned to the District Conservationist for technical corrections.

632 Using AD-1069**A Purpose of AD-1069**

AD-1069, together with any supporting attachment, is used to document the following:

- producer's request for a good faith determination and relief from ineligibility resulting from a violation of WC provisions
- action taken on the producer's request by COC and reasons for COC's determination
- action taken by SED or DD and NRCS relating to the producer's violation and request for good faith relief.

***--Note:** Restoration refers to restoring the converted wetland and mitigation refers to mitigating the converted wetland acreage through the creation of wetland either through an acceptable mitigation bank or through another site determined acceptable. Any of these 3 can meet the condition of good faith relief. The AD-1069 term of "mitigation" refers to mitigating the violations, therefore applies to restorations and mitigations (that is, mitigation bank mitigations or alternative site mitigations).--*

632 Using AD-1069 (Continued)

B Example of AD-1069

The following is an example of AD-1069.

This form is available electronically.

AD-1069 (02-06-12)		U. S. DEPARTMENT OF AGRICULTURE Farm Service Agency Natural Resources Conservation Service		1A. State Name State	1B. County Name County
REQUEST FOR GOOD FAITH RELIEF WETLAND CONSERVATION (WC) VIOLATION					
<p>NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a - as amended). The authority for requesting the information identified on this form is 7 CFR Part 12 and the Food, Security Act of 1985 as amended. The information will be used to determine eligibility for program benefits. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of ineligibility for program benefits.</p> <p>This information collection is exempted from the Paperwork Reduction Act, as it is required for administration of The Food, Conservation, and Energy Act of 2008 (see Pub. L. 110-246) Title II, Subtitle J - Miscellaneous Conservation Provisions. The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. COMPLETE PART A AND RETURN THIS FORM TO YOUR LOCAL FSA OFFICE.</p>					
PART A - PRODUCER'S REQUEST					
2. Name and Address of Producer (Including Zip Code): Producer Name 1234 Avenue A Anytown, State 0000		3. Telephone No. (Including Area Code) 555-123-4567	4. Tax Identification No. (last 4 digits) XXXX	5. Farm No. With WC Violation 1234	
				6. Crop Year of Determination 2012	
7. Request for a good faith determination. (State the circumstances surrounding the wetland activity for which a determination is requested. Include any evidence that the activities were performed in good faith and without intent to violate WC provisions and not as a scheme or device to avoid compliance.) Description of circumstances and evidence that activities were performed in good faith and without the intent to violate.					
8A. Signature of Producer (By) <i>Signature</i>		8B. Title/Relationship of the Individual Signing in the Representative Capacity		8C. Date (MM-DD-YYYY) 09-17-2012	
				FSA COMPLETES 9. Date Referred to NRCS (MM-DD-YYYY) 09-12-2012	
<p>NOTE TO PRODUCER: Application for a good faith determination does not preclude the opportunity to exercise appeal rights according to notice given with regard to the WC determination. If a good faith relief request is approved by the county committee with concurrence of the State Executive Director and NRCS, eligibility will not be restored until a mitigation agreement according to NRCS requirements is signed. The wetland must then be mitigated within the period required by NRCS.</p>					
PART B - NRCS INFORMATION					
10. Describe any pertinent facts relating to the case that NRCS or the Soil and Water Conservation District have that may affect the COC determination: Pertinent facts					
				YES	NO
11. Was the producer informed of the wetland determination made by NRCS through personal contact?				<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Does NRCS have knowledge that the producer was involved in a previous National, State, or local wetland violation issue?				<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Did NRCS have a discussion at any time with the producer concerning the wetland before the activity occurred? If "YES", describe the situation:				<input type="checkbox"/>	<input checked="" type="checkbox"/>
14A. Signature of NRCS Employee <i>Signature</i>		14B. Date (MM-DD-YYYY) 09-24-2012		15. Date Returned to FSA (MM-DD-YYYY) 09-24-2012	
PART C - DETERMINATION BY COC AND CONCURRENCES					
16. Based on information available, the COC determined that a good faith effort to comply without intent to violate: <input checked="" type="checkbox"/> Was made by the producer. <input type="checkbox"/> Was not made by the producer.					
17. Reasons for the COC determination (Attach an additional sheet, if necessary.) Reasons					
18A. Signature of COC <i>Signature</i>		18B. Date Signed (MM-DD-YYYY) 09-26-2012		19A. Signature of SED/DD for Concurrence <input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do not concur	
				19B. Date Signed (MM-DD-YYYY) 10-10-2012	
20. If SED/DD Does Not Concur, Provide Reasons:					
21A. Signature of NRCS State/Area Conservationist For Technical Concurrence <i>Signature</i>				21B. Date Signed (MM-DD-YYYY) 10-10-2012	
				<input checked="" type="checkbox"/> Concur <input type="checkbox"/> Do not concur	
PART D - MITIGATION PLAN					
<p>A Good Faith determination resulting in the reinstatement of USDA program benefits shall become effective after all required signatures in Part C are obtained and the producer signs the required mitigation plan.</p>					
22. Date mitigation plan was signed by the producer (MM-DD-YYYY): 11-12-2012					
23A. Signature of NRCS Employee <i>Signature</i>		23B. Date Signed (MM-DD-YYYY) 11-12-2012			
<p><small>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.</small></p>					

Subsection 3 Reduction in Ineligibility for WC Violations**637 Restrictions on Relief to Reduce Ineligibility****A When Relief May be Appropriate**

--Relief from total ineligibility as a result of a WC planting violation may be appropriate if-- a producer planted an agricultural commodity on a converted wetland, but is unable to receive relief under the Good Faith Relief exemption.

Example: An operator who planted an agricultural commodity on a converted wetland is determined to have acted in good faith and without the intent to violate WC provisions, but is unable to restore or mitigate the converted wetland.

In these cases, 7 CFR 12.4(c) provides that, instead of the loss of all benefits for the crop year in violation of WC planting provisions, ineligibility may be reduced based on the seriousness of the violation, as determined by DAFP. If relief is approved under this provision, ineligibility is reduced, **not** waived.

*--Relief under the provisions of this subsection will **not** be authorized:

- for wetland conversion violations
- if the producer is determined to have acted in good faith for the planting violation, and is able to restore, but is unwilling to do so.--*

Note: Reduction in ineligibility is applicable to NRCS and FSA benefits. Tenant reduction in ineligibility may also apply to the Federal Crop Insurance subsidy benefit, see paragraph 611.

637 Restrictions on Relief to Reduce Ineligibility (Continued)**B Factors for Relief Consideration**

Relevant factors, such as the following, shall be considered in determining whether relief is appropriate and the appropriate amount to reduce ineligibility.

- Did the producer act in good faith and without the intent to violate WC provisions?

* * *

- What information was available to the producer before the violation?
- What are the previous land use patterns?
- Are there previous WC violations or other local, State, or Federal wetland violations?

* * *

- What impact would a reduction in payments have on the producer's ability to repay a USDA farm loan?
- Would taking away certain benefits defeat the purposes of encouraging good conservation of soil and water resources?

638 Requesting Relief to Reduce Ineligibility**A Request for a Reduction in Ineligibility**

--Persons whose appeal rights are expired for planting an agricultural commodity on a converted wetland based on a determination of ineligibility with regard to the producer-- ineligibility determination and good faith relief request, if applicable, may request a reduction in ineligibility instead of the loss of all benefits subject to WC provisions.

The person shall have been provided with all opportunities available for appeal of the producer ineligibility determination and good faith consideration before a request for reduction in benefits instead of loss of all benefits is considered by COC.

COC may consider a request for relief from WC ineligibility from persons who do **not** exercise appeal rights or request good faith after the deadline for filing an appeal of the ineligibility determination is expired and the decision is final.

Note: Relief for an operator of a farm with a WC violation may be requested according to subparagraph 602 C.

Section 3 Updating Producer Eligibility Record

641 Producer Eligibility File

A Accessing Producer's Eligibility Record

County Offices must follow the procedure in:

- * * * 10-CM to update farm/tract data
- 3-PL (Rev. 2) to access and update producer eligibility records.

Producer eligibility is based upon the following:

- certification of compliance on AD-1026
- summarization of HELC, converted wetland, and planted converted wetland exemptions in farm records.

See Exhibit 5 for additional information on recording applicable subsidiary, farm records, and farm records producer exemptions.

B Producer AD-1026 Certification

To be eligible for certain USDA program benefits, a producer must certify compliance on AD-1026. Record the producer's certification in the eligibility file according to 3-PL (Rev. 2).

C Tract Data

Producer eligibility for conservation compliance purposes is also based upon the data recorded within the web-based system for all tracts associated with the producer. NRCS HELC/WC tract determinations are recorded according to * * * 10-CM

The eligibility record for an individual producer reflects the overall status for HELC and WC compliance.

Example: The eligibility record for a producer will be automatically updated as "Not Compliant" if the producer is associated with at least one HEL tract that is in violation of the conservation compliance provisions. The producer will be ineligible for USDA program payments even though other tracts associated with the producer are in compliance.

641 Producer Eligibility File (Continued)**D Establishing Farm Records and Producer Information in Business Partner**

Producers that are not currently in farm records, and check either box A or B on AD-1026, item 5, do not need to have farm records established. Load these producers in Business Partner. An eligibility record is automatically created when the producer is loaded in Business Partner. Update the eligibility record to show AD-1026 has been filed. If these producers subsequently apply to participate in FSA or NRCS programs, farm records would need to be established at that time.

Note: Use AD-2047 according to 1-CM, paragraph 198 to collect producer information for *--producers who need a record established in Business Partner to capture recording of AD-1026 (information collection for AD-1026 is exempt from the Paperwork Reduction Act).--*

All other producers must have farm records established to which their certification of conservation compliance applies. This applies regardless if the producer is not an FSA farm program participant and certifying to conservation compliance for NRCS, RMA, or FSA farm loans benefits. A certification by a producer without farm records could allow a circumvention of conservation compliance provisions. AD-1026 certification of compliance is not complete until the farm records are established and will not be recorded in subsidiary with a certification date until acceptable documentation is provided by the producer.

The only exceptions to this are the RMA husband/wife and revocable trust exemptions discussed in subparagraph 336 A, the RMA sole proprietorship exemption discussed in paragraph 337, and the sugar beet cooperative entities formed for RMA purposes discussed in paragraph 338. Affiliation (AD-1026, item 4) ties those producers to a certification of compliance with established farm records.

642-699 (Reserved)