



Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013

National Food Security Act Manual (NFSAM)
180 – CPA
Circular No. 3, Part 512

July 20, 2009

SUBJECT: CPA – Highly Erodible Land (HEL) Compliance for Expired Conservation Reserve Program (CRP) Land

Purpose. To provide instruction and guidance for HEL fields returning to cropland production as a result of expiring CRP contracts.

Effective Date. This Circular is effective upon receipt.

Background. Some land that was entered into CRP contracts ten to twenty years ago will be returned to cropland production as contracts expire. Existing policy and procedures found in statute, regulations, and the National Food Security Act Manual (NFSAM) permit USDA participants to apply conservation systems that provide the equivalent soil erosion protection as the conservation systems being used prior to enrollment into CRP or a 75 percent reduction of potential erodibility not to exceed 2 times the soil loss tolerance (2T).

A. The following three (3) options meet the legal requirements and NFSAM policy and procedures.

(1) Re-instate pre-CRP conservation system or plan that is documented in the Natural Resources Conservation Service (NRCS) case files or pre-CRP conservation system and/or plan in possession of the participant.

If the approved conservation system that the USDA participant had applied is in the participant's possession or is documented in NRCS case files (e.g. Field Office Technical Guide (FOTG) approved conservation system lists, Field Office Computing System (FOCS) conservation system lists, Conservation Assessment and Management Plan (CAMP) conservation system lists, a copy of the approved conservation plan/conservation system, or other FOTG documents) then that participant may be allowed to re-instate the use of that conservation system (or a conservation system with an equivalent level of soil protection (NFSAM, Part 512, Section 512.01(d)), that was in use prior to enrollment/acceptance into CRP.

(2) Re-instate pre-CRP conservation system from participant records that demonstrate HEL compliance where no NRCS documented records exist.

If the HEL fields being returned to annually tilled agricultural crop production have a USDA cropping history prior to December 23, 1985, then the participant could conditionally qualify to use the approved conservation system that was in use prior to acceptance into CRP if he or she can produce a copy of the approved conservation system and demonstrate through other historical documents (management records showing tillage used, crop rotation, chemicals used, etc) that the conservation system being applied was on the approved FOTG list. In such cases, NRCS can allow that person to apply the conservation system that was used prior to enrollment into CRP.

(3) Apply 1996 Farm Bill Acceptable Conservation Systems (ACS) criteria.

If neither of the above options applies, then the allowable erosion established in the 1996 Farm Bill as an ACS applies. ACS is defined as a “75 percent reduction of potential erodibility, not to exceed 2T for the predominant highly erodible soil map unit in the highly erodible field” (NFSAM, Part 512, Section 512.01(e)). The NFSAM provides for exceptions to the 75 percent reduction in erosion potential or less than 2T maximum, but these require approval at the State Conservationist or Conservation Planning and Technical Assistance Division (CPTAD) Director levels. Such approvals must be based on supportable documentation and are as follows:

- The responsible field office employee may approve HEL conservation systems if the predicted erosion rate does not exceed 2T.
- State Conservationists may approve HEL conservation systems that have a predicted erosion rate greater than 2T, but the predicted rate does not exceed 4T.
- The CPTAD Director shall approve all conservation systems developed in excess of 4T.

Note: Conservation systems developed and approved in excess of 2T must be supported by appropriate documentation to confirm the need for erosion rates in excess of 2T or 4T.

B. Economic Hardship

The FSA State Committee, on a request from a program participant, may provide an undue economic hardship variance and allow a conservation system that may exceed the soil protection requirements referenced above. According to 16 USC 3812a(a)(4) “The Secretary shall ensure that the standards and guidelines permit a person to use a conservation system that . . . (4) does not cause undue economic hardship on the person applying the conservation system under the person's conservation plan.

According to 7 CFR Part 12.23(j), “After a technical determination has been made, the FSA county committee shall, if a person asserts that the application of the person's conservation system would impose an undue economic hardship on the person, make a recommendation to the State FSA Committee as to whether or not the application of the conservation system would impose an undue economic hardship. The State FSA Committee may provide the person with a variance on the basis of the hardship.” Under this variance, and any conditions that may be required in the variance, the person will be considered to be in compliance with the applicable provisions of this part.

The State FSA Committee will consider relevant factors, such as the cost of installation of required conservation practices and benefits earned through programs subject to compliance with this part, and the person's general economic situation. This variance is granted for one year at a time.

Contact. If you have any questions or concerns, contact the Acting National Highly Erodible Land and Wetlands Compliance Program Manager at (202) 690-2825 or the Branch Chief, Conservation Technical Assistance Branch, Conservation Planning and Technical Assistance Division at (202) 720-7730.

/s/

LINCOLN E. BURTON
Acting Deputy Chief for Programs