

USDA Conservation Compliance

Frequently Asked Questions



The U.S. Department of Agriculture (USDA) places high importance on maintaining productive land and a healthy environment. Part of that commitment is reducing soil erosion and preserving wetlands. Soil erosion reduces the fertility of the nation's farmland and harms water quality in our lakes and rivers. Wetlands serve a vital role in protecting water quality, re-charging groundwater and reducing the impact and frequency of flooding.

The USDA Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) administer programs that assist agricultural producers and protect our natural resources. By law, these agencies are required to verify that all producers benefiting from these programs comply with the Highly Erodible Land (HEL) and Wetland Conservation (WC) Provisions of the 1985 Food Security Act (Farm Bill), as amended. The information below, presented in a question and answer format, is intended to help producers better understand the HEL and WC provisions.

Is compliance with the HEL and WC provisions mandatory?

If a producer chooses to participate in USDA programs, then they are legally required to comply with the HEL and WC provisions of the Farm Bill.

I am a USDA participant. What am I supposed to do?

Any person applying for or receiving USDA benefits must certify in writing on Form AD-1026, Highly Erodible Land Conservation and Wetland Conservation Certification, that they 1) will not produce an agricultural commodity on HEL without an adequate conservation system; 2) will not plant an agricultural commodity on a converted wetland; and 3) will not convert a wetland to make possible the production of an agricultural commodity. Form AD-1026 is completed through your local FSA office.

Producers should be cautious when bringing more land into production, combining fields

or dividing one field into two or more fields, converting woodlots to cropland, and installing or conducting new, or modifying existing drainage not previously evaluated by NRCS. Producers planning to perform any of these activities, which may affect their conservation compliance, must notify FSA by updating Form AD-1026, detailing planned or completed activities. FSA will notify NRCS, who will conduct HEL or WC technical evaluations. NRCS then issues HEL or WC determinations, as needed, to help you determine if the planned activities will affect your HEL or WC compliance.

What is a wetland?

Land classified by the USDA as wetlands often does not contain standing water and cattails. Three criteria must be met for a site to be considered wetland: (1) The site must have a predominance of hydric soils; (2) The site must be inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic (water-tolerant) vegetation, and (3) Under normal circumstances, the site supports a prevalence of hydrophytic vegetation. Wetlands may be relatively dry for long periods of time and include diverse settings, such as a seasonally saturated woodlot or an area with herbaceous plants (non-woody stems) in a crop field.

What is HEL?

HEL is cropland, hayland or pasture that can erode at an excessive rate because of the soil's properties leading to long-term decreased productivity. HEL is designated on a field basis and based on the proportion of the total field acreage that contains highly erodible soils. Producers of agricultural commodities must manage fields designated as HEL according to an NRCS-approved conservation plan or system that provides a substantial reduction of potential soil loss. Fields that are designated as Not Highly Erodible Land (NHEL) do not have to meet these requirements.

Conservation Compliance

To be in compliance with the highly erodible land conservation and wetland conservation provisions, producers must agree, by certifying on Form AD-1026 (Highly Erodible Land Conservation and Wetland Conservation Certification), that they will not:

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

Producers planning to remove fence rows, convert woodlots to cropland, combine crop fields, divide a crop field into two or more fields, install new drainage, or improve or modify existing drainage, must notify the FSA and update Form AD-1026.

FSA will notify NRCS and NRCS will then provide highly erodible land or wetland technical determinations.

What are HEL and wetland determinations?

Filing Form AD-1026 may trigger USDA to provide a technical decision or determination to communicate whether a field is HEL or contains wetlands. NRCS is responsible for making these determinations. Many determinations can be made using off-site methods. NRCS develops a preliminary technical determination for the producer to review and a new or additional field visit can be requested through an appeal.

A wetland determination includes a wetland label and size. Wetland labels include wetland (W), farmed wetland (FW), manipulated wetland (WX), and converted wetland (CW or CW+year). Wetlands that were converted and planted to an agricultural commodity before December 23, 1985, and kept in agricultural production are classified as prior-converted cropland (PC) and are exempt from WC compliance.

It is important to note that NRCS wetland determinations are conducted for the purpose of implementing the WC Provisions of the Food Security Act of 1985, as amended. These determinations may not be valid for identifying the extent of the State of Michigan's Public Act 451, Part 303, Wetlands Protection (Clean Water Act) or local regulations for this site. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should contact the Michigan Department of Environment, Great Lakes, and Energy at 1-800-662-9278, or visit www.michigan.gov/egle, prior to starting work.

Can I farm wetlands that were converted to commodity crop production after December 23, 1985?

The law allows participants to farm a wetland under natural conditions, meaning the land was not drained, cleared of woody vegetation, or otherwise manipulated to allow farming. If a wetland was manipulated and converted to allow for production of an agricultural commodity, that wetland would be labeled a converted wetland (CW or CW+year). USDA participants who convert a wetland are in violation of the WC provisions of the Farm Bill and will no longer be eligible for USDA programs. USDA participants who plant an agricultural commodity on a converted wetland may also be in violation and jeopardize their USDA benefits.

Can I appeal a wetland determination?

All wetland determinations include options for appeal. USDA participants must exercise these appeal options within 30 days of receiving a wetland determination. A wetland determination is considered administratively final if all appeal options have been exhausted or if the 30-day clock has expired. The FSA County Committee may consider an appeal of an administratively final wetland determination under certain conditions.

How long does the appeals process take?

It can take several months to several years to complete the appeals process if each appeal option is exercised. Some appeals require a site visit to gather field data, which can only take place during the growing season (typically May 1 to Nov. 1 in Michigan). If an appeal request is received outside of the growing season, it must wait until the next growing season for a site visit. Michigan NRCS has the highest wetland determination workload in the country and appeal requests are processed in the order they are received. Workload delays happen when high numbers of appeals need site visits and again when NRCS processes the field data and develops the wetland determination paperwork.

What is the bottom line for USDA participants regarding HEL and WC compliance?

For USDA participants, compliance with HEL and WC provisions is the law. Failure to comply with the law can result in loss of future USDA program payments and/or the forced repayment of past benefits.

What if I have questions?

Contact your local USDA Service Center. NRCS can provide information on authorized uses and maintenance for all types of wetlands, as well as information regarding wetland restoration and mitigation for converted wetlands. NRCS can also determine if the current cropping system and management of HEL fields meets the requirements of an approved conservation system.



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