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February 27, 2015

Stacy Jones King, Agricultural Marketing Specialist  
National Organic Program, USDA-AMS-NOP  
Room 2646-So., Ag Stop 0268  
1400 Independence Ave., SW  
Washington, DC 20250-0268

**RE: National Organic Program; Notice of Draft Guidance NOP 5020: *Natural Resources and Biodiversity Conservation for Certified Organic Operations*.** AMS-NOP-14-0062; NOP-14-01

Dear Ms. Stacy Jones King:

We would like to thank the National Organic Program (NOP) for publishing the Draft Guidance on Natural Resources and Biodiversity Conservation for Certified Operations and for the opportunity to comment. Oregon Tilth appreciates the NOP prioritizing the issue of natural resource management and biodiversity in organic systems.

Oregon Tilth is a leading certifier, educator and advocate for organic agriculture and products since 1974. Our mission to make our food system and agriculture biologically sound and socially equitable requires us to find practical ways to tackle big challenges. We advance this mission to balance the needs of people and planet through focus on core areas of certification, conservation, public health, policy and the marketplace (<http://www.tilth.org>) Starting in 2010, Oregon Tilth established a contribution agreement with the USDA NRCS to focus on and support the implementation of natural resource management on organic farms. The partnership recognizes many shared goals between the NRCS and organic standards regarding natural resources conservation. Our work together helps us promote a more conservation-minded approach to soil management, wildlife habitat, and recommended practices.

Oregon Tilth strongly believes that natural resource and biodiversity conservation are foundational concepts of organic agriculture, and this is clearly reflected in the language of this draft guidance. We think that this guidance document will assist all organic operators, certifiers and inspectors to effectively implement and assess compliance with the natural resources and biodiversity conservation standard. Our review of the draft guidance revealed several areas where we believe the NOP can improve the clarity and impact of this guidance, which will result in more consistent, efficient and effective implementation by all.

#### **Clarity on Expectations for Implementation of Conservation Practices**

NOP§205.200 is a general standard that should inform and influence all activities and production practices on a certified organic farm. This is a fundamental tenet, analogous to the medical profession's maxim, "First, do no harm." Organic agriculture should be conducted in a manner that prevents degradation of a farm's natural resources and biodiversity, and ideally improves them over time. There are also several other more specific standards that explicitly require conservation activities for organic farming operations, notably §205.203(b), which requires crop rotations, cover crops, and the application of plant and animal materials, and §205.203(c), which requires producers to maintain or improve soil organic content matter without causing contamination of

crops, soil or water.

With this in mind, we think that this guidance needs to be very clear about NOP's expectations for producers to implement conservation practices. If an organic farmer is performing crop rotation, utilizing cover crops, maintaining or improving their soil, and not contaminating their land (all of which are required by the other sections of the standards cited above), they are supporting natural resource and biodiversity conservation. However, NOP should make it clear that they expect farmers to implement practices that comprehensively maintain or improve all the natural resources as defined under §205.2, including soil, water, wetlands, woodlands, and wildlife, and conserve biodiversity. Making this explicit ensures that operators and certifiers understand that it is not enough to just maintain soil or water quality, if they are also neglecting the other components of biodiversity and natural resources. We suggest the following revision to the 2<sup>nd</sup> bullet of the guidance under "Role of Certified Organic Operations":

- In the OSP, the operation must ~~address~~ describe or list practices that explain how it will comprehensively conserve biodiversity by "maintain[ing] or improve[ing] natural resources, including soil and water quality," maintaining or improving all natural resources, including soil, water, wetlands, woodlands, and wildlife, as required by §205.200 of the regulations and per the §205.2 definition of *Natural resources of the operation*. In many cases, the certifier will provide the operation with an OSP template with a designated section for the operation to describe its activities and its biodiversity monitoring approach (e.g. visual assessment of soil erosion, species counts for biodiversity, or testing for water quality).

We also suggest the following revision to the 1<sup>st</sup> bullet of the guidance under "Role of Certifiers" (the next section will detail our rationale for removing the reference to the NRCS conservation plan):

- Certifiers must ensure that an operation's OSP ~~or, if applicable, NRCS conservation plan~~ describes or lists practices that explain addresses the operation's monitoring plan and practices to comprehensively support natural resources and biodiversity conservation, pursuant to § 205.200 of the regulations.

It is important to note that the text in the preamble of the Organic Food Production Act (OFPA) ensures that comprehensively addressing biodiversity would not put a burden on the producer: "The use of 'conserve' establishes that the producer must initiate practices to support biodiversity and avoid, to the extent practicable, any activities that would diminish it." What works well on one farm may not work well on another, and this guidance should ultimately lead to operations conducting conservation practices and monitoring improvement on an operation-specific basis.

### **Conservation Plans and the Organic System Plan (OSP)**

There are many resources that organic farmers might use in order to plan and implement conservation practices on their farms. Oregon Tilth applauds NOP's recognition of the Natural Resource Conservation Service (NRCS) and the guidance language indicating that producers who have an NRCS plan may be able to use it to satisfy the requirements of §205.200. We completely agree that farmers working with NRCS should benefit from having a conservation plan when completing their OSP.

The current wording in the guidance states:

*"The operation may reference or provide evidence of a conservation plan developed in conjunction with NRCS instead of developing a separate OSP section for natural resources, provided that the conservation plan addresses all the requirements of §205.200 and other applicable portions of the USDA organic regulations."*

We have several concerns with this specific language. First, NRCS plans vary greatly by farm in scope and detail. Thus, if certifiers were to simply accept the plan in place of a portion of an OSP, then they would have

no consistency in information format or scope between operations. They may also end up receiving a 100-page document as part of the OSP which is unnecessary and cumbersome. Organic certifiers are not necessarily natural resource conservation experts, and in order to effectively and consistently review information, it needs to be provided in the context of organic certification.

Next, a plan proves that the farm has engaged with NRCS at some point in time, but doesn't guarantee that they are implementing the plan as outlined, or that they have been granted funding to actually perform the conservation activities. Additionally, plans generally only identify the deficiencies that need action, and don't document conservation activities already being taken by the farmer. Finally, this option only works for domestic operations, and we would like to see all farmers working with third-party conservation organizations receive benefit in their organic certification.

We would suggest changing that language to the following:

*“The operation may refer to a current conservation plan and/or contract developed in conjunction with NRCS or other conservation agency or non-governmental organization (NGO), as part of their OSP, to meet the requirements of §205.200.”*

### **Implementation by Certifiers**

We strongly believe that this guidance should not significantly increase the paperwork burden on producers or certifiers, beyond ensuring a comprehensive OSP that encompasses biodiversity and natural resource conservation.

This language would allow for better practical implementation by organic certifiers. They may include a question in their OSP such as “Do you have a current conservation plan or contract with NRCS or other conservation agency or NGO?” If the client answers yes, they can provide a summarized list of practices implemented from the plan in their OSP rather than submit the full plan. Oregon Tilth also offers a checklist of conservation practices as part of their OSP template that the operator may use to identify all applicable practices they perform. The certifier should verify that the list of practices appears to comply with the organic standards and provides a comprehensive conservation plan; the on-site inspector should verify that the practices being implemented are consistent with what is documented in the OSP, and should observe the complete conservation plan during the on-site inspection.

As we've previously noted, organic certifiers are generally not well-versed in natural resource conservation plans or assessments. NOP will need to provide training to certifiers that will give certification staff a basic foundation of knowledge in order to effectively understand these plans and assess them for compliance in the OSP, as well as reviewing natural resource and biodiversity issues of concern found at inspection, and formulating appropriate and impactful corrective action requirements. We don't believe it is necessary for certifiers to attain the same level of expertise as the NRCS Technical Service Providers (TSPs), but ensuring that all certifiers have the same baseline knowledge to apply to these requirements will be crucial for consistent implementation.

### **Collaboration with other USDA Agencies to Improve Efficiency**

We are pleased to see the reference to NRCS in this guidance, as that demonstrates a desire to reduce the burden of certification on operations that are working with other agencies. We strongly encourage NOP to further investigate other ways to collaborate with NRCS and other USDA agencies to reduce redundancy and increase the efficiency of natural resource and biodiversity data collection and usage.

One opportunity for NOP to consider would be to incorporate the Highly Erodible Land Conservation (HELC) and Wetlands Conservation (WC) Certification into the NOP requirements. Since 1985, the Farm Bill has required farmers to meet the HELC and WC provisions in order to be eligible to receive some USDA benefits,

including most programs administered by the Farm Services Agency (FSA), NRCS, and the Risk Management Agency (RMA). The provisions are in place specifically to protect HEL from excessive soil erosion, and protect wetlands from conversion. Because many of these FSA and RMA programs are geared towards non-organic farmers (such as crop insurance), and because the certification is voluntary, some organic farmers may not currently participate.

The certification requires producers to complete a two-page form (FSA AD-1026, attached) to self-certify that they are not performing activities that would be detrimental to highly erodible land or wetlands on their property. Producers must know whether or not their land is designated as HEL or Wetland in order to complete the self-certification. If they are not already participating in USDA programs and therefore don't know how their land is classified, they can request a free HEL or Wetland determination and assessment from the NRCS if one has not previously been performed.

FSA maintains the official USDA records of HEL and Wetland determinations; these are recorded both within the geographic information system and the automated farm and tract records maintained by FSA. FSA provides this information to NRCS and RMA as needed to determine eligibility for the programs requiring the self-certification.

Generally, after the Form 1026 is completed, conservation compliance is not specifically reviewed except under the following circumstances:

- The producer is included as part of the 5% reviewed annually
- A whistle blower complaint requires investigation
- An NRCS planner identifies concerns on an operation

Producers who are found to be out of compliance with the provisions have one year to work with NRCS to resolve their compliance issues. Any producers who do not resolve their issues lose their eligibility for the aforementioned USDA programs.

This certification is a multi-agency effort within the USDA with an existing collaborative structure that could potentially accommodate the NOP, and would provide expert assessment and compliance enforcement for two major components of natural resource conservation. NOP could require all applicable producers to be in compliance with this provision, and could work with FSA to provide certifiers with data on which producers have self-certified, and which have been found to be noncompliant. It might even be possible to provide this information to certifiers through the certifier-specific section of the organic producer database project currently in development.

We acknowledge that the land history requirements of NOP standards can sometimes create an incentive for farmers to convert natural ecosystems into organic production, which is problematic. This issue needs to be a continuing conversation. Requiring organic farmers to complete the HELC and WC Certification in order to demonstrate compliance with §205.200 would establish a minimum and consistent baseline for assessing natural resource conservation, and would be a practical and impactful step towards preserving lands of high conservation value. We strongly encourage NOP to investigate this collaborative effort, and should it prove feasible, we would recommend a two-year transition period for farmers to meet this requirement. We also encourage NOP to consider the possibility of additional standards and guidance to preserve and protect high value conservation land.

### **Specific Provisions for Handling Operations**

We have noted that this draft guidance does not explicitly identify handling operations anywhere in the document, except for several items at the very end of Appendix A that are specific to handlers. The term “operator” is used throughout the guidance, but most of the specifics are geared towards farming operations.

It is clear from the language of §205.200 that handlers are included in the natural resources conservation

requirement, and we request that NOP clarify this guidance to make that unambiguous. Handlers are a critical part of the organic industry, and should also be held accountable for resource conservation practices. The suggestions for handlers provided in Appendix A could certainly work for some handlers, but many handling operations have strict food safety requirements which would conflict with some of the proposed suggestions, or are located in areas which present other barriers to implementation.

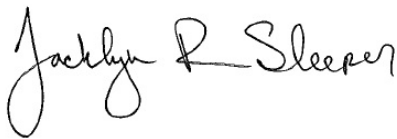
We would recommend adding more conservation activities that could be effectively implemented in a broader variety of processing and manufacturing operations, such as the following:

- Waste reduction plans, incorporating the tenets of “reduce, reuse, recycle” for processing inputs, packaging, etc.
- Alternative waste streams, such as composting, food bank donation program, providing food waste to farmers for crop or livestock production, and collaboration with municipal utilities to reduce environmental impact.
- Implementing alternative and/or renewable energy sources, such as solar panels, wind turbines, methane digesters, etc.
- Life Cycle Assessment (LCA) to determine other ways to reduce environmental impact, such as implementing more sustainable sourcing practices, increasing efficiency in supply chain logistics, etc.
- Sponsoring a local wildlife preserve or wetland conservation project, if not in a suitable location to have one on-site.

As with farming operations, these conservation practices would need to be developed by each handling operation to work with their specific location and production practices. Clarifying the guidance to explicitly include handlers, and providing more widely-applicable suggestions such as those listed above, will ensure that handlers are aware that they must fully participate in these requirements of the organic standards, and will allow certifiers to more ably assess compliance.

Oregon Tilth thanks NOP for its leadership and guidance on this critical component of the USDA organic regulations, and for the opportunity to share our perspective and suggestions.

Sincerely,

A handwritten signature in black ink that reads "Jackie R. Sleeper". The signature is written in a cursive, flowing style.

Jackie Sleeper  
Farm Program Technical Specialist  
Oregon Tilth, Inc.

AD-1026

(10-30-14)

## U.S. DEPARTMENT OF AGRICULTURE

FarmServiceAgency

HIGHLY ERODIBLE LAND CONSERVATION (HELC) AND  
WETLAND CONSERVATION (WC) CERTIFICATION

Read attached AD-1026 Appendix before completing form.

## PART A – BASIC INFORMATION

1. Name of Producer	2. Tax Identification Number (Last 4 digits)	3. Crop Year
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4. Names of affiliated persons with farming interests. Enter "None," if applicable.

*Affiliated persons with farming interests must also file an AD-1026. See Item 7 in the Appendix for a definition of an affiliated person.*

5. Check one of these boxes if the statement applies; otherwise continue to Part B.

A. ☐ The producer in Part A does not have interest in land devoted to agriculture. Examples include bee keepers who place their hives on another person's land, producers of crops grown in greenhouses, and producers of aquaculture AND these producers do not own/lease any agricultural land themselves. **Note:** Do not check this box if the producer shares in a crop.

B. ☐ The producer in Part A meets all three of the following:

- 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, and
- has not converted a wetland after February 7, 2014.

Perennial crops include, but are not limited to, tree fruit, tree nuts, grapes, olives, native pasture and perennial forage. A producer that produces alfalfa should contact the Natural Resources Conservation Service at the nearest USDA Service Center to determine whether such production qualifies as production of a perennial crop.

**Note:** If either box is checked, and the producer in Part A does not participate in Farm Service Agency (FSA) or Natural Resources Conservation Service (NRCS) programs, the full tax identification number of the producer must be provided, but establishment of detailed farm records with FSA is not required. Go to Part D and sign and date.

## PART B - HELC/WC COMPLIANCE QUESTIONS

Indicate YES or NO to each question. <i>If you are unsure of whether a HEL determination, wetland determination, or NRCS evaluation has been completed, contact your local USDA Service Center.</i>	YES	NO
6. During the crop year entered in Part A or the term of a requested USDA loan, did or will the producer in Part A plant or produce an agricultural commodity (including sugarcane) on land for which an HEL determination has not been made?		
7. Has anyone performed (since December 23, 1985), or will anyone perform any activities to:		
A. Create new drainage systems, conduct land leveling, filling, dredging, land clearing, or excavation that has <b>NOT</b> been evaluated by NRCS? <b>If "YES", indicate the year(s):</b> _____		
B. Improve or modify an existing drainage system that has <b>NOT</b> been evaluated by NRCS? <b>If "YES", indicate the year(s):</b> _____		
C. Maintain an existing drainage system that has <b>NOT</b> been evaluated by NRCS? <b>If "YES", indicate the year(s):</b> _____ <b>Note:</b> Maintenance is the repair, rehabilitation, or replacement of the capacity of existing drainage systems to allow for the continued use of wetlands currently in agricultural production and the continued management of other areas as they were used before December 23, 1985. This allows a person to reconstruct or maintain the capacity of the original system or install a replacement system that is more durable or will realize lower maintenance or costs.		
<b>Note:</b> If "YES" is checked for Item 7A or 7B, then Part C must be completed to authorize NRCS to make an HELC/WC and/or certified wetland determination on the identified land. If "YES" is checked for Item 7C, NRCS does not have to conduct a certified wetland determination.		
8. Check one or both boxes, if applicable; otherwise, continue to Part C or D.		
A. <input type="checkbox"/> Check this box only if the producer in Part A has FCIC reinsured crop insurance and filing this form represents the <u>first time</u> the producer in Part A, including any affiliated person, has been subject to HELC and WC provisions.		
B. <input type="checkbox"/> Check this box if either of the following applies to the producer and crop year entered in Part A:		
<ul style="list-style-type: none"> <li>• Is a tenant on a farm that is/will not be in compliance with HELC and WC provisions because the landlord refuses to allow compliance, but all other farms not associated with that landlord are in compliance. (AD-1026B, Tenant Exemption Request, must be completed).</li> <li>• Is a landlord of a farm that is/will not be in compliance with HELC and WC provisions because of a violation by the tenant on that farm, but all other farms not associated with that tenant are in compliance. (AD-1026C, Landlord or Landowner Exemption Request, must be completed).</li> </ul>		

## PART C – ADDITIONAL INFORMATION

9. If "YES" was checked in Item 6 or 7, provide the following information for the land to which the answer applies:

A. Farm and/or tract/field number: \_\_\_\_\_  
If unknown, contact the Farm Service Agency at the nearest USDA Service Center.

B. Activity: \_\_\_\_\_

C. Current land use (specify crops): \_\_\_\_\_

D. County: \_\_\_\_\_

**PART D – CERTIFICATION OF COMPLIANCE**

I have received and read the AD-1026 Appendix and understand and agree to the terms and conditions therein on all land in which I (or the producer in Part A if different) and any affiliated person have or will have an interest. I understand that eligibility for certain USDA program benefits is contingent upon this certification of compliance with HELC and WC provisions and I am responsible for any non-compliance. I understand and agree that this certification of compliance is considered continuous and will remain in effect unless revoked or a violation is determined. I further understand and agree that:

- all applicable payments must be refunded if a determination of ineligibility is made for a violation of HELC or WC provisions.
- NRCS may verify whether a HELC violation or WC has occurred.
- a revised Form AD-1026 must be filed if there are any operation changes or activities that may affect compliance with the HELC and WC provisions. I understand that failure to revise Form AD-1026 for such changes may result in ineligibility for certain USDA program benefits or other consequences.
- affiliated persons are also subject to compliance with HELC and WC provisions and their failure to comply or file Form AD-1026 will result in loss of eligibility for applicable benefits to any individuals or entities with whom they are considered affiliated.

**Producer's Certification:**

*I hereby certify that the information on this form is true and correct to the best of my knowledge.*

10A. Producer's Signature (By)	10B. Title/Relationship (If Signing in Representative Capacity)	10C. Date (MM-DD-YYYY)
<b>FOR FSA USE ONLY</b> (for referral to NRCS) Sign and date if NRCS determination is needed.	11A. Signature of FSA Representative	11B. Date (MM-DD-YYYY)

**IMPORTANT:** If you are unsure about the applicability of HELC and WC provisions to your land, contact your local USDA Service Center for details concerning the location of any highly erodible land or wetland and any restrictions applying to your land according to NRCS determinations before planting an agricultural commodity or performing any drainage or manipulation. Failure to certify and properly revise your compliance certification when applicable may: (1) affect your eligibility for USDA program benefits, including whether you qualify for reinstatement of benefits through the Good Faith process; and (2) result in other consequences.

**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, the Food Security Act of 1985 (Pub. L. 99-198), and the Agricultural Act of 2014 (Pub. L. 113-79). The information will be used to certify compliance with HELC and WC provisions and to determine producer eligibility to participate in and receive benefits under programs administered by USDA agencies. 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) and USDA/FSA-14, Applicant/Borrower. Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of producer ineligibility to participate in and receive benefits under programs administered by USDA agencies.

This information collection is exempted from the Paperwork Reduction Act as specified in the Agricultural Act of 2014 (Pub. L. 113-79, Title II, Subtitle G, Funding and Administration). The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THIS COMPLETED FORM AD-1026 TO YOUR COUNTY FARM SERVICE AGENCY (FSA) OFFICE.**

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited basis will apply to all programs and/or employment activities.) Persons with disabilities, who wish to file a program complaint, write to the address below or if you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877-8339 or (800) 845-6136 (in Spanish).

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider and employer.

**APPENDIX TO FORM AD-1026  
HIGHLY ERODIBLE LAND CONSERVATION (HELC) AND  
WETLAND CONSERVATION (WC) CERTIFICATION**

**1. Overview**

The following conditions of eligibility are required for a producer to receive any U.S. Department of Agriculture (USDA) loans or other program benefits that are subject to the highly erodible land conservation (HELC) and wetland conservation (WC) provisions. Unless an exemption has been granted by USDA, the producer agrees to all of the following on all farms in which the producer, and any affiliated person to the producer (as specified in 7 CFR Part 12), has an interest:

- **NOT** to plant or produce an agricultural commodity on highly erodible land or fields unless being farmed in accordance with a conservation plan or system approved by the Natural Resources Conservation Service.
- **NOT** to plant or produce an agricultural commodity on a wetland that was converted after December 23, 1985.
- **NOT** to have converted a wetland after November 28, 1990, for the purpose, or to have the effect, of making the production of an agricultural commodity possible on such converted wetland.
- **NOT** to convert a wetland by draining, dredging, filling, leveling, removing woody vegetation, or any other activity that results in impairing or reducing the flow and circulation of water in a way that would allow the planting of an agricultural commodity.
- **NOT** to use proceeds from any Farm Service Agency farm loan, insured or guaranteed, or any USDA financial assistance program, in such a way that might result in negative impacts to a wetland, except for those projects evaluated and approved by Natural Resources Conservation Service.

**2. Statutory and Regulatory Authority**

The Food Security Act of 1985, as amended, requires producers participating in most programs administered by the Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), and the Risk Management Agency (RMA) to comply with HELC and WC provisions on all land owned or farmed that is considered highly erodible or a wetland unless USDA determines an exemption applies. Producers participating in these programs, and any individual or entity considered to be an affiliated person of a participating producer, are subject to these provisions. The regulations covering these provisions are set forth at 7 CFR Part 12; all such provisions, whether or not explicitly stated herein, shall apply.

**3. Explanation of Terms**

Agricultural commodity is **any** crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane.

Highly erodible land is any land that has an erodibility index of 8 or more.

Highly erodible fields are fields where either:

- 33.33 percent or more of the total field acreage is identified as soil map units that are highly erodible; or
- 50 or more acres in such field are identified as soil map units that are highly erodible.

Perennial crop is any crop that is planted once and produces crops over multiple years. Go to [www.nrcs.usda.gov/compliance](http://www.nrcs.usda.gov/compliance) for a list of perennial and annual crops.

Wetland is an area that:

- has a predominance of hydric soils (wet soils);
- is inundated or saturated by surface or groundwater (hydrology) at a frequency and duration sufficient to support a prevalence of hydrophytic (water tolerant) vegetation typically adapted for life in saturated soil conditions; and
- under normal circumstances supports a prevalence of such vegetation, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

#### 4. NRCS and FSA Determinations

When making HELC and WC compliance determinations:

- NRCS makes technical determinations; these include :
  - For HELC compliance:
    - whether land is considered highly erodible ;
    - establishing conservation plans or systems; and
    - whether highly erodible fields are being farmed in accordance with a conservation plan or system approved by NRCS.
  - For WC compliance:
    - whether land is a wetland and if certain technical exemptions apply , such as prior converted;
    - whether a wetland conversion has occurred.
- FSA's responsibilities include:
  - making eligibility determinations, such as who is ineligible based upon NRCS technical determinations of non-compliance.
  - acting on requests for application of certain eligibility exemptions, such as the good faith relief exemption.
  - maintaining the official USDA records of highly erodible land and wetland determinations. The determinations are recorded both within the geographic information system and the automated farm and tract records maintained by FSA; however, it is important to know that determinations may not include all of a producer's land. If a producer is uncertain of the highly erodible land and wetland determinations applicable to any of the producer's land, the producer should contact the appropriate USDA Service Center for assistance.

#### 5. HELC and WC Non-Compliance - FSA and NRCS Programs

Producers who are not in compliance with HELC and WC provisions are not eligible to receive benefits for most programs administered by FSA and NRCS. If a producer received program benefits and is later found to be non-compliant, the producer may be required to refund all benefits received and/or may be assessed a penalty.

In particular, unless exemptions apply, a producer participating in FSA and NRCS programs must: not plant or produce an agricultural commodity on a highly erodible field unless such production is in compliance with a conservation plan or system approved by NRCS; not have planted or produced an agricultural commodity on a wetland converted after December 23, 1985; and, after November 28, 1990, must not have converted a wetland for the purpose, or to have the effect, of making the production of an agricultural commodity possible on such converted wetland.

A producer who violates HELC or WC provisions is ineligible for applicable FSA and NRCS benefits for the year(s) in violation. A planting violation, whether on highly erodible land or a converted wetland, results in ineligibility for benefits for the year(s) when the planting occurred. A wetland conversion violation results in ineligibility beginning with the year in which the conversion occurred and continuing for subsequent years, unless the converted wetland is restored or mitigated before January 1<sup>st</sup> of the subsequent year.

#### 6. HELC and WC Non-Compliance - Risk Management Agency - Crop Insurance Policies Reinsured by the Federal Crop Insurance Corporation

Producers obtaining federally reinsured crop insurance will not be eligible for any premium subsidy paid by the Federal Crop Insurance Corporation (FCIC) for any policy or plan of insurance if the producer:

- has not filed a completed Form AD-1026 with FSA certifying compliance with HELC and WC provisions; or
- is not in compliance with HELC and WC provisions.

Unless an exemption applies, a producer must:

- not plant or produce an agricultural commodity on a highly erodible field, unless such production is in compliance with a conservation plan approved by NRCS;
- not plant or produce an agricultural commodity on a wetland converted after February 7, 2014; and
- not have converted a wetland for the purpose, or to have the effect, of making the production of an agricultural commodity possible on such converted wetland after February 7, 2014.

A producer is ineligible for any premium subsidy paid by FCIC on all policies and plans of insurance for the reinsurance year (July 1 – June 30) following the reinsurance year of a final determination of a violation of HELC or WC provisions, including all administrative appeals, unless specific exemptions apply. Further, a producer will be ineligible for any premium subsidy paid by FCIC on all policies and plans of insurance for a reinsurance year if they do not have a completed Form AD-1026 on file with FSA certifying compliance on or before the June 1 prior to the beginning of the subsequent reinsurance year (July 1), unless otherwise exempted. RMA will contact FSA to determine compliance with HELC and WC provisions and the filing of Form AD-1026 prior to the beginning of a reinsurance year, which begins on July 1. If the producer is not in compliance and is not exempt, the producer will be ineligible for premium subsidy for all crops with a sales closing date between the following July 1 through the next June 30.

## 7. Affiliated Persons

Any affiliated person of a producer requesting benefits subject to HELC and WC provisions must also be in compliance with those provisions. Ineligibility of a producer will also apply to affiliated persons of that producer. If an affiliated person has a farming interest (as owner, operator, or other producer on any farm), the affiliated person must also file Form AD-1026 certifying compliance with HELC and WC provisions in order for the producer requesting benefits to be eligible.

**Use this table to determine affiliated persons who must be in compliance with HELC and WC provisions and file Form AD-1026. If you are unsure about an affiliated person determination, please contact FSA at your local USDA Service Center for assistance.**

<b>IF the producer requesting benefits is a (an) . . .</b>	<b>THEN affiliated persons with farming interests who must be in compliance with HELC and WC provisions and file Form AD-1026 are. . .</b>
individual	spouses or minor children with separate farming interests, or who receive benefits under their individual ID number.
<b>NOTE:</b> For a minor, parents or guardians shall be listed as affiliated persons .	estates, trusts, partnerships, and joint ventures in which the individual filing, or the individual's spouse or minor children have an interest.
	corporations in which the individual filing or the individual's spouse or minor children have more than 20% interest.
general partnership limited partnership limited liability company joint venture estate irrevocable or revocable trust Indian tribal venture or group	first level members of the entity.
corporation with stockholders	first level shareholders with more than 20% interest in the corporation.  <b>Note:</b> First level shareholders of a corporation with 20% interest or less in the corporation are not considered affiliated persons of the corporation.

### IMPORTANT NOTICE:

Signature on Form AD-1026 gives representatives of USDA authorization to enter upon and inspect all farms in which the producer in Part A of Form AD-1026 has an interest for the purpose of confirming HELC and WC compliance.

**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, the Food Security Act of 1985 (Pub. L. 99-198), and the Agricultural Act of 2014 (Pub. L. 113-79). The information will be used to certify compliance with HELC and WC provisions and to determine producer eligibility to participate in and receive benefits under programs administered by USDA agencies. 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) and USDA/FSA-14, Applicant/Borrower. Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of producer ineligibility to participate in and receive benefits under programs administered by USDA agencies.

This information collection is exempted from the Paperwork Reduction Act as specified in the Agricultural Act of 2014 (Pub. L. 113-79, Title II, Subtitle G, Funding and Administration). The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THE COMPLETED FORM AD-1026 TO YOUR COUNTY FARM SERVICE AGENCY (FSA) OFFICE.**

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If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter by mail to U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider and employer.