

United States Department of Agriculture



Natural Resources Conservation Service
6013 Lakeside Blvd.
Indianapolis, IN 46278



Farm Service Agency
5981 Lakeside Blvd.
Indianapolis, IN 46278

April 16, 2009

SUBJECT: Joint USDA Indiana Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Good Faith Guidelines

TO: All NRCS and FSA Employees

Action Required Immediately

This joint memorandum is being sent to all individuals involved in the administration of the Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) program in Indiana USDA Service Centers. The Food Security Act of 1985, as Amended, is the responsibility of both the Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS) to jointly administer. Provisions of the 2008 Farm Bill provided additional guidance regarding the joint responsibility of administering good faith provisions of HELC/WC violations.

FSA and NRCS in Indiana both agree that all employees of the respective agencies will follow the attached guidelines until changed by future joint agreement.

Please direct all NRCS related programmatic questions to Teresah Caire, NRCS Assistant State Conservationist – Programs, at (317) 290-3200 ext. 320; and FSA questions should be directed to Gail Peas, FSA Program Specialist, at (317) 290-3030 ext. 227.

/s/
JANE E. HARDISTY
State Conservationist

/s/
DONALD L. HUNTON
Acting State Executive Director

Attachment

FSA/NRCS Indiana Joint Good Faith Provisions for HELCS/WC Violations

Policy found in FSA Directive 6-CP (Rev. 3) Paragraph 716 and 731 provides policy for FSA County Committee determinations of good faith relief for landowners and operators that have violated Highly Erodible Land Conservation (HELCS) and Wetland Conservation (WC) provisions. Furthermore, policy in FSA Notice CP-638 provides that all good faith determinations receive concurrence from the FSA State Executive Director and NRCS State Conservationist due to program changes in the 2008 Farm Bill. The following guidance has been jointly agreed to by both Indiana FSA and Indiana NRCS to provide a process for implementing good faith provisions that are requested by landowners or operators due to HELCS or WC violations.

Effective immediately, the responsibility for FSA State Executive Director good faith concurrence shall be re-delegated to the appropriate FSA District Director that manages the FSA County Office in which the good faith request has been processed. In addition, effective immediately, the responsibility for NRCS State Conservationist good faith concurrence shall be re-delegated to the appropriate NRCS Area Conservationist that has responsibility for the NRCS office in which the HELCS Conservation Plan or WC Restoration/Mitigation Plan was developed.

The FSA District Director shall have responsibility of ensuring that all FSA County Committee determinations of good faith relief are meritorious and warrant such relief. The NRCS Area Conservationist shall have responsibility of reviewing the determination and ensuring that the HELCS Conservation Plan or WC Restoration/Mitigation Plan meets all technical requirements.

The procedure for obtaining good faith concurrences shall be the following:

- (1)** Producer in violation should request good faith concurrence from the FSA COC for their HELCS or WC violation. The request should be submitted in writing by letter or on form AD-1068 or AD-1069 (written requests shall be stapled to form AD-1068 or AD-1069).
- (2)** The producer shall initiate a request with NRCS to develop an HELCS Conservation Plan or WC Restoration/Mitigation Plan.
- (3)** The AD-1069 or AD-1068 shall be forwarded to NRCS for completion of part B.
- (4)** The COC receives the completed AD-1069 or AD-1068 from NRCS and makes a determination of whether good faith provisions are meritorious. The decision is documented in Part D of the AD-1068 and Part C of the AD-1069; as well as in the COC executive session minutes.
- (5)** The AD-1068 or AD-1069 is forwarded to NRCS for completion of Part E of the AD-1068 or Part D of the AD-1069.

- (6) The NRCS DC shall forward a copy of the entire case file, including the unsigned HELC Conservation Plan or WC Restoration/Mitigation plan, to the NRCS Area Conservationist for written technical concurrence prior to contacting the producer for signature. If the determination and/or plan submitted for review do not meet specifications, the NRCS Area Conservationist shall contact the NRCS DC for revisions.
- (7) The FSA CED shall submit a copy of the entire case file, including appropriate COC executive session minutes, to the FSA District Director for review and concurrence of the FSA determination to grant good faith relief.
- (8) The FSA District Director and NRCS Area Conservationist shall provide written letters of concurrence to the requesting County Office if good faith has been determined warranted.
- (9) Once a written letter of concurrence is received by the NRCS District Conservationist, then the producer may be contacted to sign the plan and NRCS may complete Part E of the AD-1068 or Part D of the AD-1069 and return the following to FSA:
 - a. Signed AD-1068 or AD-1069
 - b. Signed HELC Conservation Plan or WC Restoration/Mitigation Plan
 - c. Copy of NRCS Area Conservationist letter of concurrence
- (10) The FSA CED shall take the following actions based on the FSA District Director's concurrence of good faith relief or denial of good faith concurrence:
 - a. If written good faith concurrence is received from the FSA District Director, the FSA COC shall notify the producer that good faith has been granted and re-instate USDA benefits. In addition, a GPR penalty shall be assessed according to rates published in FSA Notice CP-638.
 - b. If written good faith concurrence is not received from the FSA District Director, the FSA COC shall notify the producer that good faith relief has been denied and appeal rights of SED reconsideration, mediation and NAD shall be provided. USDA benefits may be re-instated according to the following:
 - i. For HELC violations - the crop year in which an approved conservation system is implemented by the producer.
 - ii. For WC violations – the calendar following the completed restoration/mitigation of the violated acres.