

Florida Highly Erodible Land Conservation & Wetland Conservation Compliance Action Plan



To improve effectiveness and efficiency in carrying out the conservation compliance provisions of the Food Security Act of 1985, NRCS has directed that states develop Highly Erodible Land Conservation (HEL) and Wetland Conservation (WC) Action Plans. Action Plans were implemented beginning in FY 2013. The intent of Action Plans is to create a separation of duties for field office conservationists between HELC/WC compliance determinations and the voluntary assistance they provide to the servicing unit (e.g., county or counties) directly assigned to their official duty location.

Action Plans must include four overarching objectives:

1. Ensure separation between field conservationists and USDA program participants within their servicing unit in conducting wetland and certain HEL determinations, and in conducting other HELC/WC reviews and appeals;
2. Maintain a high-valued relationship between NRCS field staff and customers;
3. Improve efficiencies in determinations and reviews; and
4. Effect positive changes in NRCS HELC/WC processes and procedures.

By separation of duties, we mean that:

- a) NRCS field office staff can complete HEL Preliminary Technical Determinations in their servicing unit (domicile office), but will not be involved with the HELC reconsiderations, compliance reviews, and whistle blower investigations within their servicing units.
- b) NRCS field office staff will not be involved with WC determination, appeal, and compliance review processes within their servicing unit.

Additionally, if NRCS service center/field office staff are working outside their servicing unit, they shall not directly provide conservation planning assistance and conduct a compliance activity, aside from HEL Preliminary Technical Determinations (PTDs), for a USDA program participant simultaneously. Staff with other actual or perceived conflicts in these duties may request separation by discussing the issue with their supervisor on a case by case basis.

All NRCS service center/field office (FO) staff must have an understanding of the HELC/WC provisions as described in the National Food Security Act Manual (NFSAM) as well as other program eligibility, permit, and regulatory issues that impact agricultural producers. General information and guidance on the various eligibility, permit, and regulatory requirements associated with highly erodible land, wetlands, and other environmental concerns is an integral part of the conservation planning process. The separation of duties policy does not change the role and responsibilities of FO staff when conducting conservation planning, but is limited to the official NRCS response to the receipt of an AD-1026 or FSA-569, and processing of assigned Food Security Act Compliance Review tracts.

The Florida HELC/WC Action Plan encompasses two distinct functions:

- A. Assistance Related to Conducting HELC/WC Determinations
 - conducting HEL and Wetland technical determinations,
 - making related technical decisions related to the HELC/WC provisions,
 - responding to appeals of adverse technical determinations and decisions, and
 - assisting USDA participants in regaining eligibility/reinstatement for program benefits.
- B. Conducting Food Security Act Compliance Reviews in accordance with procedures in the National Food Security Act Manual (NFSAM), Part 518

Procedures for carrying out these functions are described in Parts A and B below.

A. Assistance Related to Conducting Determinations

Overview

HEL and wetland PTDs are initiated via Form AD-1026 or Form FSA-569. Revisions to the national HEL separation of duties policy were made in June 2014 recommending that FOs process all PTDs, since PTDs have no immediate effect on producer eligibility. Florida NRCS FO staff may request separation of duties on a case by case basis for HEL PTDs initiated by receipt of Form FSA-569.

HEL and WC technical determinations and decisions will be made only by staff listed on the respective Florida NRCS Job Approval Authority (JAA) List of Certified Personnel. A current list of certified staff is maintained in Section III of the Field Office Technical Guide, Part D, Legislated Program Criteria.

Area [HEL/WC Teams](#) have been designated by their respective Assistant State Conservationist-Field Operation (ASTC-FO) based on staff technical expertise and training to conduct compliance determinations. All requests, aside from AD-1026 referrals for HEL PTDs, must be forwarded to the responsible Area HELC or WC Team Coordinator. Cases where HELC/WC Team assistance must be requested include:

- investigation of potential wetland violations observed by FO staff or whistleblowers,
- development or evaluation of HEL conservation plans necessitated by compliance violations,
- wetland minimal effect exemption determinations,
- scope and effect determinations, and
- wetland mitigation plans to help a client retain or regain eligibility for USDA program benefits.

In all such cases, the District Conservationist (DC) will contact the Team Coordinator for assistance in accordance with the steps below. HELC/WC Team staff will follow the appropriate steps to complete the needed activities.

HEL/WC determinations have completion timeframes stated in the NFSAM Part 510 based on the date of receipt of Form AD-1026 or Form FSA-569 from FSA as follows:

1. Determinations where no onsite review is conducted will be issued **within 15 working days** of receipt of Form AD-1026 (NFSAM Part 510.12 C)
2. Determinations requiring an onsite review will be issued **within 60 working days** of receipt of Form AD-1026 (NFSAM Part 510.12 C).

3. Determinations needed for FSA loan applications (see Part 510.12D) will be issued within **15 working days** from receipt of Form AD-1026.
4. Determinations needed to complete a report of potential non-compliance on Form FSA-569 will be issued within **60 calendar days** from receipt of Form FSA-569 from FSA (FSA Handbook 6-CP, Part 504). **Note:** For HEL compliance deficiencies found while providing technical assistance, follow procedures in the NFSAM Part 520.11.

There are exceptions to these timeframes (see NFSAM Part 510.12 C). Offices with heavy HEL or wetland determination workloads should establish priorities among determination requests and keep supervisors or Area Team Coordinators and FSA apprised of any significant delays affecting issuance of determinations.

STEP 1: Acting Upon of Referrals for HEL and Wetland Determinations

For HEL PTD's the FO will:

- a) Stamp Form AD-1026 (or FSA-569 as applicable) with date received from FSA and log the referral on form FL-CPA-42A HEL Determination Log Sheet. The form may be downloaded from the FOTG Section I(E) or Section IV Forms. This log will be maintained in a file location designated by the FO and will be used to document the accurate and timely processing of HEL determination requests.
- b) Create a file for the client and populate it with items d) 1-7 below, then complete Steps 3a – 3e.

Note: The DC should ensure that the AD-1026/FSA-569 is accurately completed in order to decide whether a HEL PTD is needed. Refer to guidance in the [Food Security Act Compliance](#) SharePoint folder for help determining whether deficiencies exist on Form AD-1026 and for NRCS response to FSA when a determination is not needed.

For all other determination and compliance assistance requests, Wetland and HEL Compliance Document subfolders have been created on the [Florida NRCS SharePoint](#) website under each Area folder. These are to be used for forwarding Form AD-1026 and Form FSA-569 determination and related requests from the FO to the appropriate Area Wetland Team or Area HEL Team as appropriate. The DC will:

- c) Stamp the form with date received from FSA and log the referral or other assistance request on form FL-CPA-42B Wetland Determination Log Sheet or form FL-CPA-42A in the Area HEL and Wetland Compliance folder **within one week** of receipt from Farm Service Agency (FSA) or assistance request from client. The FL-CPA-42A located in the Area SharePoint WC/HEL Compliance subfolder is reserved for HEL referrals that require action by the Area HEL Team and should not be used for HEL PTDs unless initiated by Form FSA-569 where the DC has been approved for separation by his or her supervisor.
- d) Create a SharePoint folder in the client's name. Upload the following information to the folder **within one week** of referral/request. Files, particularly large files such as generated maps, may be emailed to the Team Coordinator or other Team member in lieu of uploading to the folder, but the Coordinator must concur with this procedure to ensure that the determination is acted on in a timely manner.
 1. Form AD-1026 (or FSA-569 as applicable) and FSA aerial photo with requested field(s) marked.

Note: It is the DC's responsibility to ensure the AD-1026/FSA-569 is accurately completed prior to uploading to the Area SharePoint folder for action by the Area Team. Refer to guidance in the [Food Security Act Compliance](#) SharePoint folder for help determining whether deficiencies exist on Form AD-1026 and for NRCS response to FSA when a determination is not needed.

2. Location map
3. Participant and other affiliated persons contact information from FSA
4. Web Soil Survey Map of the field(s)
5. National Wetland Inventory (NWI) map of the field(s) for wetland determinations
6. Previous HEL and/or wetland determinations on file for the field(s) in question
7. FSA official CLU layer map containing previous determinations if not provided on the FSA aerial photo.

If both a HEL and a wetland determination are needed, two separate determinations will be issued, one by the DC or assigned Area HEL Team member and the other by the assigned Area Wetland Team member.

Additional information may be requested by the WC Team Coordinator or other Team member assigned to conduct the activity. FO staff may facilitate communication between the client and Team member if needed, but will have no involvement in the technical determination or related activities. This also applies to HEL compliance activities that require separation of duties.

STEP 2: Assignment of Certified Agency Staff Member(s) to Conduct the Activity

- a) The Area HELC/WC Team Coordinator will transfer the SharePoint client folder to the HELC/WC Compliance folder on the Florida NRCS server **within one week** of receipt to maintain space on the SharePoint website.
- b) The Team Coordinator will assign the project to staff with the appropriate HEL/Wetland job approval authority(s). Only certified agency staff members (those with job approval authority) have access to the server folder. It is the responsibility of the Area HELC/WC Team Coordinator to ensure complete separation of duties, i.e., FO staff assigned to Area Teams may not process compliance activities on tracts within their servicing unit.

STEP 3: Issuance of Preliminary and Final Technical Determinations

- a) The agency staff member completing the PTD will contact the client to schedule a field visit(s) as needed and will maintain direct contact with the client. This staff member will generally assume the role of the Designated Conservationist for issuance of the PTD.
- b) Upon completion of the PTD, the Designated Conservationist will:
 1. Complete and sign the appropriate PTD letter of transmittal and NRCS-CPA-026e (see FOTG Section I (E) for template documents).
 2. Transmit these along with the determination map directly to the participant and other recipients on the cc list. For HEL PTDs in counties having no HE or PHE soils, it is not necessary to include a determination map as long as the appropriate HEL letter template is used that states there is no HEL or PHEL in the county.
 3. Log the date of transmittal on form FL-CPA-42A or FL-CPA-42B, as appropriate, located in the respective Area Wetland and HEL Compliance Document subfolders on the [Florida NRCS SharePoint](#).
- c) If reconsideration or mediation is not requested within 30 days, the determination becomes a Final Technical Determination (FTD). **The Designated Conservationist will log the date the**

determination becomes final on the HEL or Wetland Determination Log Sheet FL-CPA-42A or FL-CPA-42B. No notification is issued to the client.

- d) If reconsideration is requested as described in the PTD transmittal letter, the Designated Conservationist will notify the Area Team Coordinator and the state HEL or Wetland Compliance Specialist. For HEL determinations, a member(s) of the Area Team will take over as the Designated Conservationist and schedule the field or office visit, log the reconsideration date on Form FL-CPA-42, and represent NRCS to review the PTD with the participant. **Note: For wetland determinations, the Designated Conservationist must schedule a site visit to review the technical basis for the determination; an office visit is not sufficient.** If the person does not disagree with the technical basis for the determination (i.e., the current or former presence of the three required delineation factors), they should state in writing their concerns so that it can be determined whether NRCS has made a procedural error and may need to rescind a determination, or whether the person's concerns relate to issues controlled by FSA. In all cases, there is no further involvement of FO staff in the technical determination.
- e) If mediation is requested through NRCS, the Designated Conservationist will notify the Area Team Coordinator and the state HEL or Wetland Compliance Specialist, who will schedule and document all mediation proceedings. See the Appeals and Mediation Manual ([Title 440, Part 510](#)) Subparts B and C for further information. There will be no further involvement of FO staff in the technical determination.
- f) If the PTD is revised to be a non-adverse FTD, the Designated Conservationist will:
 - 1. complete and sign the FTD transmittal letter and NRCS-CPA-026e. The NRCS-CPA-026e will contain the Certification Date (for wetlands) and will be designated as the Final Technical Determination (FTD) in the Remarks
 - 2. transmit these along with the determination map directly to the participant with courtesy copies to the recipients listed on the appropriate transmittal letter, and
 - 3. log the FTD Certification Date on form FL-CPA-42A or FL-CPA-42B.
- g) If the decision remains adverse, the Designated Conservationist will:
 - 1. forward the NRCS-CPA-026e, map, FTD transmittal letter and supporting record to the state HEL or Wetland Compliance Specialist for review and signature by the State Conservationist (STC) or designee.
 - 2. after completion of 1. above, transmit the NRCS-CPA-026e, letter of transmittal, and determination map via certified mail/return receipt directly to the participant with courtesy copies to the recipients listed on the FTD transmittal letter, and
 - 3. log the FTD Certification Date on Form FL-CPA-42A or FL-CPA-42B.

See the Appeals and Mediation Manual ([Title 440, Part 510](#)) Subparts B and C for further information.

STEP 4: Rendering of Final Agency or Department Decision

- a) If the client chooses to appeal an adverse FTD to the FSA County Committee or USDA National Appeals Division, the Designated Conservationist will assist the NRCS state HEL or Wetland Compliance Specialist to process the appeal and participate in appeal hearings as needed. See the Appeals and Mediation Manual ([Title 440, Part 510](#)) Subparts B and C for further information.

- b) Upon conclusion of appeals, the administrative record will be completed by the State HEL or Wetland Compliance Specialist and provided to the Designated Conservationist and DC for proper filing. See the Appeals and Mediation Manual ([Title 440, Part 510](#)) Subparts B and C for further information. The date of conclusion of the appeal will be recorded on Form FL-CPA-42A/42B.

STEP 5: Assisting a USDA Participant in Regaining Eligibility or Reinstatement for Program Benefits

Program participants can regain their eligibility or reinstatement for USDA benefits following a determination of non-compliance by implementing a conservation plan on HEL or mitigating for lost wetland functions, values, and acres.

- a) When NRCS assistance is required for reinstatement purposes or to regain eligibility, any participant requests to the FO for assistance will be referred to the Area HELC/WC Team Coordinator, who will assign tasks appropriate for this purpose.
- b) The procedures in Steps 1 and 2 above will be followed. Tasks for HEL compliance will be conducted in accordance with [NFSAM Part 520.2](#). Tasks for wetland compliance will be conducted in accordance with [NFSAM Part 515, Subpart B](#) and any additional guidance in the FOTG Section III.
- c) The final decision that the requirements to regain eligibility or reinstatement have been met will be made by the Designated Conservationist, NRCS state Wetland or HEL Compliance Specialist, or STC. A copy of all official documents and correspondence related to the decision will be provided to the DC.
- d) The final agency or Department decision will be provided to the participant from the Designated Conservationist or STC/designee.

If agency staff assistance outside the Area HELC/WC team is required for any of the steps above, the appropriate Team Coordinator will assign those tasks to staff outside of the FO servicing unit with concurrence by the ASTC-FO in that area. This assistance may include tasks such as plant species identification, wetland functional assessments, mitigation site selection, and conducting follow-up visits and monitoring. Assistance must come from staff identified on the appropriate JAA list in the FOTG.

A copy of all official documents and correspondence related to the five steps above will be maintained in the HELC/WC Compliance folder on the Florida NRCS server for a minimum of three years from the date of the final decision or reinstatement. **Files shall be copied to the appropriate FO for permanent retention upon the conclusion of Step 3 (and Steps 4 and 5 if appropriate).**

B) Conducting FSA Compliance Reviews

HELC/WC certified agency staff members will be responsible for conducting Compliance Reviews annually. The steps listed below provide a basic outline of this process. See the HELC/WC Compliance folder and the NFSAM [Part 518](#) for complete requirements.

STEP 1:

Upon receipt of annual notification via State Bulletin of the assigned tracts for their Area, the **HEL Team Coordinator** will follow the Bulletin instructions to determine valid tracts. When valid tracts are selected, the Coordinator will assign Reviews to staff with the appropriate HEL and Wetland Job Approval Authorities. When assigning Compliance Reviews, it is the responsibility of the Area HEL Team Coordinator to ensure complete separation of duties for any FO staff assigned to conduct a Review.

STEP 2:

The HELC and WC certified agency staff members assigned to complete the Review will contact the respective DC to request information needed in accordance with [Part 518.10\(B\)](#). The following information will be needed for the request:

- location map
- participant contact information
- Web Soil Survey Map and NWI Map of tract
- previous HEL and/or wetland determinations for the field(s) in question and FSA official CLU layer map containing any previous determinations

STEP 3:

An HELC/WC certified agency staff member will notify the landowner, in writing, of the Compliance Review in accordance with requirements stated in the [NFSAM Part 518.0\(C\)](#).

STEP 4:

The assigned HELC and WC certified agency staff members will conduct an office review of the available data and make a site visit to confirm conditions. Documents used to complete the review will be kept in the HELC/WC Compliance folder on the Florida NRCS server for a minimum of three years from completion of the online compliance report. Prior to or at the end of three years, the files shall be copied or transferred to the appropriate FO for permanent retention.

STEP 5:

The HELC and WC certified agency staff members will complete the tract review, enter required data into the online compliance report, and report completion of the review to the HEL Team Coordinator. Go to <https://csr.sc.egov.usda.gov/Default.aspx> and select the Data Entry tab. Instructions for Data Entry and Reports may be found in the HELC/WC Compliance folder under “FSA Compliance Reviews.”

If a potential violation (PV) is determined, the HELC/WC certified agency staff member will follow the notification procedures in the NFSAM [Part 518.12](#), inform the DC to request form FSA-569 from the Farm Service Agency **within one week**, and complete the steps in Part A as necessary.