

Pennsylvania eFOTG - Section III
Planning Guidance for Compliance with the Legislative Requirements of the
HEL Conservation Provisions of the Farm Bill

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One of the common federal environmental compliance regulations that need to be addressed by cropland operators participating in USDA programs is the Highly Erodible Land Conservation Compliance provisions of the legislated 1985 Food Security Act, and subsequent Farm Bills as amended.

The following guidance is presented to help planners better understand policies and procedures for developing conservation systems to meet soil erosion problem treatment levels specifically for the purposes of compliance with the HELC provisions. USDA participants must certify compliance with the HELC provisions by signing form AD-1026 “agreeing to not plant or produce an agricultural commodity on highly erodible fields unless **actively applying an approved conservation plan or maintaining a fully applied conservation system**” in order to preserve eligibility for certain USDA benefits.

What does actively applying an approved conservation plan for HELC mean?

It means that the producer is implementing all conservation practices on all HEL designated fields as scheduled in an approved conservation plan to meet the substantial reduction requirements of the provision.

Plans or systems approved, applied, and maintained prior to July 3, 1996 have different substantial reduction requirements than those approved after that date. All conservation plans addressing soil erosion approved after July 3, 1996 must meet the new substantial reduction requirements.

Do participants have to have an approved conservation plan to comply with HELC provisions?

No. A person may self certify by signing the AD1026 that they are actively applying an approved conservation plan OR that they are maintaining a fully applied conservation system.

An approved conservation plan document describes the application and maintenance of an approved conservation system. A conservation system may be documented as approved and being actively or fully applied in a conservation plan or documented as an acceptable conservation system during a Conservation Compliance Status Review.

Approved conservation systems may be ones developed specifically for that person and land as documented in an approved conservation plan OR one of the approved conservation systems listed in the county Conservation Systems Guidance Documents for Resource Management Systems located in FOTG Section III.E. A producer may use one of the approved conservation systems listed in the FOTG without documenting it in a conservation plan.

An approved conservation system listed in the FOTG addresses common local baseline conditions for the statewide common resource areas that occur in a county and treat the commonly identified local resource concerns to the RMS Quality Criteria.

If the producer is actively applying or maintaining an approved conservation system listed in the FOTG, the system has already been evaluated and found to be acceptably meeting the substantial reduction requirements of the HELC provisions. A record of the approved system and evidence that it is actively being applied or is fully applied and being maintained will be documented during the Status Review.

Do participants without an approved conservation plan have to use a conservation system approved in the FOTG?

No. A USDA participant may elect to use a conservation system not approved in a conservation plan nor currently approved in the FOTG. If that is the case, they will need to demonstrate that their conservation system is an acceptable conservation system meeting the substantial reduction requirements during a Conservation Compliance Status Review. The system will need to be evaluated to document before and after soil loss rates.

What is the difference between *actively applying* a conservation plan or system and *maintaining a fully applied* conservation plan or system?

Actively applying a conservation plan or system means that not all of the practices that are scheduled in the compliance plan or are required by the system have yet been installed or applied.

A *fully applied* conservation plan or system is one where all of the practices needed for HELC compliance have been installed or applied and are being maintained.

Plans approved before July 3, 1996 must also have been fully applied and maintained prior to that date.

What does *maintaining a fully applied* conservation plan or system mean?

Maintaining a fully applied plan or system means that all of the practices required to meet the acceptable substantial reduction treatment level of the HELC provisions will be operated and maintained according to the requirements of their standards and specifications.

Must new operators of the same land maintain the conservation plan or conservation system fully applied by the previous operator to be in compliance with HELC provisions?

New operators can maintain conservation plans or systems that the previous operator had fully applied OR they may maintain a different conservation system to the same substantial reduction treatment level developed for that land. In all cases, the level of reduction to be maintained by all future operators of that land must meet the acceptable substantial reduction levels.

Can new operators of the same land actively apply a different conservation plan or system than one that was being actively applied or was fully applied by the previous operator?

Yes, as long as the new plan or system meets or exceeds the requirements of the plan or system that was fully applied by the previous operator prior to July 3, 1996. For plans approved after that date, the new operator must meet the acceptable substantial reduction level requirements of the HELC provision.

If the previous operator was maintaining a fully applied and approved HELC compliance plan or system before July 3, 1996, the new operator may accept the plan and continue to apply and maintain the same system OR they may apply and maintain an equivalent system to the same treatment level of substantial reduction required by the previous operator's plan.

If the previous operator was still actively applying a HELC compliance plan approved after July 3rd 1996 and it was not yet fully applied, the new operator may continue to actively apply it until it is fully applied OR they may apply and maintain a different conservation plan or system meeting the acceptable substantial reduction level requirements of the HELC provision.

If the previous operator had fully applied a plan approved after July 3rd 1996, the new operator may maintain the same plan or system OR they may apply and maintain a different conservation plan or system meeting the acceptable substantial reduction level requirements of the HELC provision.

What substantial reduction requirements are acceptable to comply with HELC provision?

The purpose of a HEL Conservation Compliance System is to substantially reduce soil erosion on Highly Erodible cropland to acceptable levels of soil loss in order to preserve eligibility of the person for USDA program benefits. All sheet and rill, wind (not typical in Pennsylvania), and ephemeral gully erosion concerns are applicable to the HELC provisions. All USDA program participants must be actively applying either an approved conservation plan or maintaining a fully applied conservation plan or system that achieves substantial reduction.

As stated in the manual, **substantial reduction levels are acceptable** if:

- the same person or a new owner or operator continues to use the original conservation system **approved, applied and maintained prior to 7/3/1996** or revises it to a system providing an equal or greater level of erosion protection,
- or there is a 75% reduction of the potential erodibility, **not to exceed* 2 times "T"** for the predominant highly erodible map unit on plans approved after 7/3/1996.

Note that substantial reduction does not apply to sodbusted land where soil erosion may never exceed T.

Conservation systems developed after 7/3/1996 must utilize the planning technology available at the time in order to determine if it meets the acceptable 75% reduction not to exceed 2 times T requirements. At the time of publication of this guidance, the current planning technology is RUSLE2 and has been available since 2004 in one version or another. Previous versions included RUSLE1.05 and other versions of RUSLE.

Therefore, the producer's HEL compliance conservation system does not need to reduce soil erosion to the Tolerable soil loss Quality Criteria treatment level "T" except in sodbusting situations. The compliance plan should not be assumed to meet other federal and state laws and regulations either, such as Chapter 102 Erosion and Sediment Control.

*The State Conservationist may approve predicted erosion rates between 2 times T and 4 times T as acceptable conservation systems and only the appropriate Division Director can approve systems developed in excess of 4 times T.

If the Conservation System does not meet T, can it still be documented in a Conservation Plan?

Yes! The client's conservation objectives should clearly state the level of treatment to be provided.

If the *only* purpose of the plan is to comply with the legislative requirements of the HELC provisions, this type of plan follows the progressive planning procedures since the level of treatment does not meet RMS Quality Criteria of T for soil erosion. Such a progressive plan should include an alternative treatment meeting T for the client to consider when they are ready, willing, and able. Alternative treatments are filed separately in the conservation planning case file and are NOT recorded in the conservation plan document as they are not decisions agreed to by the producer.

If the client's objectives include meeting the legislative requirements of other programs such as EQIP, CRP, FRPP, AMA, etc, the rules of that program relating to the required level of treatment will also need to be considered. Future operators of that land will be subject, as a minimum, to the HELC treatment level requirements and requirements of any other program in which they choose to participate.

What records relating to HELC Compliance Plans are required and where are they maintained?

FSA keeps the official copy of the CPA026e Highly Erodible Land and Wetland Conservation Compliance Determination. The NRCS copy of form CPA 026e along with the AD1026 referral from FSA, the appeals letter and other determination related documents will be maintained in an appropriate HELC/WC determination case file folder. An appropriate determination case file folder can be one filed

according to Farm and Tract numbers separate from producer's conservation planning case files. Conservation planning assistance notes or other records in the planning case file should document as needed the physical location of determination records and/or conservation plans approved and maintained prior to July 3, 1996 that continue to be used on the planning unit if those records are not maintained in the planning case file.

Where used, the approved HELC conservation plan document should be filed in the producer's conservation planning case files. Acceptable conservation systems and supporting documents such as a copy of the approved system used from the FOTG or the soil loss estimates for systems not in the FOTG should also be filed in the producer's conservation planning case files. Because the level of substantial reduction for plans approved prior to July 3, 1996 can be maintained by future operators, it is important that local office records of those plans and their supporting documents are accurately filed.

Maintain HELC compliance documents according to GM120 part 408 records guide. The records guide for planning documents states that case files should be established and maintained for each conservation plan or inventory and evaluation according to the requirements of the appropriate conservation program. HELC compliance is an activity carried out under the Conservation Technical Assistance Program and related documents should be filed accordingly.

Disposal of HELC compliance records is to be accomplished as soon as practicable after they become eligible. Conservation Plans and I&Es may become eligible to be destroyed one year after they are cancelled. Related documents such as survey notes, drawings, field notes, that have a future value should be retained.

When land changes ownership, the following data including the AD1026, conservation plan, CPA 026, and a copy of the maps recording determinations, etc should be retained for possible use in a succeeding plan. Additional information pertaining to appeals such as area soil maps, maps of onsite investigations, and a chronology of events and decisions are to be retained in a separate appeals case file. Destroy appeals related documents only when the land is irrevocably removed from agricultural uses.

Are Alternative Conservation Systems (ACS) required?

No. Pennsylvania's Alternative Conservation Systems guidelines for treatment to the T + 2 level on Highly Erodible Land were cancelled by bulletin PA180-7-5 on July 26, 2007. (If T = 3, T + 2 = 5, whereas regulation allows 2 times T = 6. Whereas if T = 1, T + 2 equals 3, whereas regulations only allow 2 times T = 2). All plans approved after 7/3/1996 need to meet the newer substantial reduction requirements in order to be acceptable for compliance with the HELC provisions.

Acceptable treatment levels for compliance with the HELC provisions of the Farm Bill are described by the substantial reduction requirements in the National Food Security Act Manual and restated above. The current expression "acceptable conservation system" is not to be confused with the former term Alternative Conservation Systems (ACS).

Planning alternatives are always encouraged. "Planning alternatives" is another similar expression not to be confused with the former term "Alternative Conservation Systems". Planning alternatives are a set of options for the client to choose from. Planning alternatives should be developed to meet the RMS Quality Criteria treatment level for the resource concern being addressed, but will be developed at least to the legislated treatment level where programs and initiatives exist such as the HELC provision of the Farm Bill. When an alternative is developed below the Quality Criteria level, NRCS strives to encourage the RMS Quality Criteria treatment level by developing and presenting a RMS alternative for the client to consider in the future.