

USDA/Farm Service Agency

OMB No.: 0560-0185

Highly Erodible Land and Wetland Conservation (7 CFR 12)

Purpose: The purpose of this document is to request for an extension of a currently approved information collection request without revision to support the USDA Conservation Compliance requirements. After the 60-day notice was published, FSA realized that FSA has obsoleted CCC-21 in 2010 and the data collected on the CCC-21 was no longer used for program purposes. Therefore, the burden hours for this information collection request have been revised.

Terms of Clearance: In accordance with 5 CFR 1320, FSA must display the OMB control number and expiration date for the forms associated with this collection. The OMB control number is displayed in each form. FSA is not displaying the expiration date because it was a waste of resources to change the expiration date every three years. It would also require personnel and time to reprogram forms each time the expiration date changes, when the forms would otherwise not need to be revised.

FSA estimates that this collection will be web-based and available entirely electronically by the end of 2011. The agency is reminded that the web-based instruments must be submitted for approval. The database is now obsolete. The previous information collection package referenced a web-based eligibility database. This database was erroneously referenced in the supporting documentation of the previous information collection. The web-based eligibility software that was previously referenced is not a database that contains the data collected in this information collection package. Instead, the web-based eligibility software, with respect to HELC/WL, is for internal use for State and County FSA Offices to set HELC/WL determination flags for FSA program payment eligibility purposes. Therefore, this information collection is not accessible through any web-based database/system.

The AD-1026B, AD-1026C, AD-1026D, AD-1068, AD-1069 and FSA-492 are available at <http://forms.sc.egov.usda.gov> and are accepted electronically from the respondents with their access credentials only. The AD-1026 is also available to complete and print only to mail, or fax. It can be submitted in person at the Service Center.

A. Justification

1. Explain the circumstances that make the collection of information necessary.

The Food Security Act of 1985 (the 1985 Act) as amended by the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act) and the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), and the Agricultural Assistance Act of 2003 (the 2003 Act), and the Food, Conservation, and Energy Act of 2008 (the 2008 Act) provides that persons who produce an agricultural commodity on a field on which highly erodible land (HEL) is predominate, or designate land on which HEL is predominated to be set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce production of an agricultural commodity, shall be ineligible for benefits under certain programs administered by USDA, unless the production of an agricultural commodity on HEL is in compliance with an approved conservation plan or system or an exemption applies. These regulations are published at 7 CFR Part 12. These provisions are an attempt to preserve the nation's wetlands and to reduce the rate at which soil is lost from highly erodible land. Form AD-1026 is the primary form used by participants of USDA programs to certify their compliance with the requirements of the Act. This form includes a continuous certification. Producers are only required to file an updated AD-1026 when there are changes or activities that affect compliance with HELC or WC provisions, including refusal to provide access to determine compliance, the producer submits a written request that AD-1026 be withdrawn, or there is a change in the farming operation.

The Act also allows special exemptions in making eligibility determinations which are reviewed and documented by the Farm Service Agency County Committee.

2. Indicate how, by whom, and for what purpose the information is to be used.

AD-1026. The information is used by NRCS and FSA to determine the eligibility of a person or entity to receive certain benefits provided by USDA. Certification of compliance is required on AD-1026 for programs subject to these provisions to inform the producer of the requirements, keep track of affiliated persons who are required to comply, determine whether the producer is in compliance and eligible for benefits, obtain a signed certification that HELC and WC provisions will not be violated, provide a means for making referrals to NRCS for determinations, and provide authorization for USDA representatives to enter and inspect all farms in which the producer has an interest for the purpose of confirming compliance with HELC and WC provisions. An AD-1026 appendix contains the eligibility conditions for HELC and WC compliance and is affixed to the AD-1026 and is provided to the producer before the producer completes AD-1026 and certifies compliance. AD-1026's are continuous and do not require re-certification by producers on an annual basis. Producers are only required to file an updated AD-1026 when there are changes or activities that affect compliance with HELC or WC provisions, including refusal to provide access to determine compliance, the producer submits a written request that AD-1026 be withdrawn, or there is a change in the farming operation. AD-1026's are available on the internet which can be printed and completed by the producer and returned to the USDA Service Center by fax, mail or in person. The form is also available at the USDA Service Center and can be either picked up or mailed to the producer. It may be returned by fax, mail or in person to the local USDA Service Center.

AD-1026B. AD-1026B documents data required for making tenant HELC exemption determinations on farms where the landlord refused to comply with HELC provisions. In addition, AD-1026B is used to document tenant HELC exemption determinations by the FSA COC. Provisions allow a tenant to make a request for a violation exemption by completing form AD-1026B. The form allows the tenant to provide detailed information about their specific case which will assist the FSA County Committee in making a determination. HELC exemption requests shall be made in the administrative County Office for the farm on which the HELC exemption is requested. AD-1026B is available at the USDA Service Center and can be either picked up or mailed to the tenant and then completed and returned to the Service Center by fax, mail or in person. It is also available through the FSA internet website. Only part A is completed by the tenant.

AD-1026C. AD-1026C documents data required for making landlord or landowner HELC exemption determinations on farms where the tenant refuses to comply with HELC provisions. In addition, AD-1026C is used to document landlord or landowner HELC exemption determinations by the FSA COC. Provisions allow the landowner or landlord to make a request for a violation exemption by completing AD-1026C. The landowner or landlord may include any details that may affect the determination of the FSA County Committee. HELC exemption requests shall be made in the administrative County Office for the farm on which the HELC exemption is requested. AD-1026C is available at a USDA Service Center and can be either picked up or mailed to the landlord. The form is also available through the FSA internet website. After completion by the landowner or landlord, the form may be returned to the Service Center by fax, mail or in person. Only part A is completed by the landlord.

AD-1068. AD-1068 is used to document producer's request for a good faith determination and relief from ineligibility resulting from a violation of HELC provisions. Also, it is used to document action taken on the producer's request by COC and reasons for COC's determination and action taken by SED

or DD and NRCS relating to the producer's violation and request for good faith relief. Lastly, it documents the graduated payment reduction (GPR) amount if good faith relief is approved for a HELC violation. Producer shall file a good faith relief request with COC for the county where the farm with the HELC violation is located for program administration purposes. When requested by the producer, form AD-1068 is available at a USDA Service Center and can be either picked up or mailed to the producer. After completion by the producer it is returned to the Service Center by fax, mail or in person. The form is also available through the FSA internet website. Only part A is completed by the producer.

AD-1069. AD-1069 is used to document producer's request for a good faith determination and relief from ineligibility resulting from a violation of WC provisions. Also, it is used to document action taken on the producer's request by COC and reasons for COC's determination and action taken by SED or DD and NRCS relating to the producer's violation and request for good faith relief. Producer shall file a good faith relief request with COC for the county where the farm with the WC violation is located for program administration purposes. When requested by the producer, form AD-1069 is available at a USDA Service Center and can be either picked up or mailed to the producer. After completion by the producer it is returned to the Service Center by fax, mail or in person. The form is also available through the FSA internet website. Only part A is completed by the producer.

FSA-492. To maintain eligibility for covered USDA benefits, persons whose property is affected by third party conversion activity must file FSA-492 and provide COC with the required information. FSA-492 shall be filed before planting an agricultural commodity on the wetland covered by a third party. The AD-492 documents evidence that the conversion of wetlands was caused by actions of other persons who have no interest in the land that was converted, not caused by predecessors in interest on the land that was converted, and not the result of scheme or device to avoid compliance with WC provisions. FSA-492 is available at a USDA Service Center and can be either picked up or mailed to the producer. After completion by the producer it is returned to the Service Center by fax, mail or in person. The form is also available through the FSA internet website. Only part A is completed by the producer.

AD-1026D. AD-1026D shall be completed by producers for all requests for relief to avoid undue economic hardship if NRCS is unable to develop a conservation plan within their technical guidelines to the satisfaction of the producer because the producer asserts that application of a conservation system according to NRCS requirements would impose an undue economic hardship on the producer. AD-1026D documents the producer's request for relief and supporting statements, information from NRCS to assist in making a determination, COC recommendation to the STC, and the STC's final determination. When requested by the producer, AD-1026D is available at a USDA Service Center and can be either picked up or mailed to the producer. After completion by the producer it is returned to the Service Center by fax, mail or in person. The form is also available through the FSA internet website. Only parts A and B are completed by the producer.

Also, the total burden for traveling time is included in this information collection.

3. Use of information technology.

The AD-1026B, AD-1026C, AD-1026D, AD-1068, AD-1069 and FSA-492 are available at <http://forms.sc.egov.usda.gov> and are accepted electronically from the respondents with their access credentials only. The AD-1026 is also available to complete and print only to mail, or fax. It can be submitted in person at the Service Center.

4. Describe efforts to identify duplication.

The circumstances for compliance and relief are unique for each producer and are not otherwise duplicated. The information collected on these forms is not available from any other source and must be obtained from the producer to determine whether compliance conditions are met. The forms are also used to determine if relief is warranted when a violation occurred.

5. Methods to minimize burden on small businesses or other small entities.

There are no additional reporting requirements created specifically for small businesses to meet the requirements. There are about 5000 small businesses.

6. Consequence if information collection were less frequent.

Information is collected only when a producer requests benefits subject to HELC/WC compliance or if a problem situation exists for which relief is requested. Certification of compliance by a producer is not required on an annual basis. Producers are only required to file an updated AD-1026 when there are changes or activities that affect compliance with HELC or WC provisions, including refusal to provide access to determine compliance, when the producer submits a written request that AD-1026 be withdrawn, or there is a change in the farming operation.

7. Special Circumstances.

The information collected is consistent with guidelines in 5 CFR 1320.6

8. Federal Register notice, summarization of comments and consultation with persons outside the agency.

The notice and request for comments were published in the Federal Register (74 FR 35158) on Thursday, December 13, 2012. The only comment received from the public was a general comment, not specific to HEL/WC, providing that all payoff programs should be dropped because agribusinesses make fake, false claims for alleged losses and claims are not adequately monitored.

The following 3 NRCS contacts had no comments on the FR Notice concerning information collection of HELC/WL certification:

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Natural Resources Conservation Service, USDA
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Office: 202-720-3783

9. Explain any decision to provide any payment or gift to respondents.

The agency does not provide any payment or gift to respondents for the information request.

10. Confidentiality provided to respondents.

FSA uses handbooks to advise State and County Offices of their responsibility regarding the confidentiality of information provided by the applicants in accordance with the requirements of the Privacy Act, FOIA of 1974 and OMB Circular A-130, "Responsibilities for the Maintenance of Records about Individuals by Federal Agencies". All completed forms and accompanying documentation are kept in the county office file cabinets. Applicants are given copies of these documents.

11. Questions of a sensitive nature.

No information of a sensitive or personal nature is requested.

12. Estimates of burden.

See the attached FSA-85-1 for the overall of estimated burden hours in this information collection.

The estimated annual cost to the public is \$4,706,478. (Total Burden Hours = 261,471 times \$18.00 per hour). The average hourly rate is \$18.00 for the respondents in this information collection.

13. Total annual cost burden to respondents or recordkeepers.

There are no capital or start up costs associated with this information collection.

14. Provide estimates of annualized cost to the Federal government.

Total cost of forms development, printing and distribution = $259,288 \times \$0.20 = \$51,857$. (Amount arrived from average cost per form of 20 cents). Work hours from County Employees: 15 minutes per response $\times 259,288$ responses = 64,822 work hours $\times \$25.00$ (including benefits) = \$1,620,550.

Total Cost to the Federal Government = \$1,694,958.

15. Reasons for changes in burden.

There is a program change by 875 hours decreased total burden hours due to removal of CCC-21 that was obsolete. Due to the obsolete form, the number of responses decreased from 262,788 to 259,288 and the burdens hours decreased from 262,346 to 261,471.

16. Tabulation, analysis, and publication plans.

The information collected is not planned for publication. It is used solely to administer the program. The number of HELC and WC exemptions is provided on request to members of Congress.

17. Reasons display of expiration date of OMB approval is inappropriate.

FSA is not displaying expiration date on the forms which would require personnel and time to reprogram forms each time the expiration date changes, when the forms would otherwise not need to be revised. OMB control number is displayed in each form.

18. Exceptions to 83-1 certification statement.

There are no exceptions to this certification statement.

19. How is this information collection related to the Customer Service Center?

Information collected for Conservation Compliance is used by FSA and NRCS in USDA Service Centers. FSA uses the data to determine producer eligibility for USDA programs. At this time, all of the data entered in the web-based farm records application and producer eligibility file is readily available to NRCS personnel. The data (acreage, highly erodible land determinations, tract information, land use, producer planting history, and related information is used to help develop the individual conservation plans prepared by NRCS for the producer. There is also an interagency geographic information system (GIS) system currently in place within each USDA service center. Individual producer land data may be combined with other NRCS data layers (e.g: soil types), to make the required conservation compliance highly erodible land determinations for the producer. The collected land data is available to individual land owners to review when completing revised AD-1026's.