

## Conservation Compliance Rulemaking – Description of Changes

The Conservation Compliance Interim Final Rule is scheduled to be available for viewing in draft form at USDA on April 16, 2015 and published in the Federal Register during the week of on April 20, 2015. This rule incorporates changes necessary to implement the 2014 Farm Bill provisions that make persons receiving Federal crop insurance premium subsidies subject to conservation compliance requirements.

The list below provides specific regulatory changes:

- In § 12.2, Definitions, adds definitions for terms that address provisions for crop insurance participants, including “Approved insurance provider,” “FCIC,” “Reinsurance year,” and “RMA.”
- In § 12.3, Applicability, removes references to the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands as conservation compliance provisions are not applicable to these locations. Also identified that, for the purposes of Federal crop insurance premium subsidy, the HEL and WC provisions apply to final determinations, including all administrative appeals, after February 7, 2014. Ineligibility for situations of non-compliance or failure to certify compliance will be applied beginning with the 2016 reinsurance year for any policy or plan of insurance with a sales closing date on or after July 1, 2015.
- In § 12.4, Determination of Ineligibility, adds reference to § 12.13, Special Federal crop insurance premium subsidy provisions, and addresses distinction between persons subject to § 12.13 and others subject to HEL and WC provisions; removes references to “production flexibility contracts;” and changes reference from “Agricultural Market Transition Act” to the “Agricultural Act of 2014.”
- In § 12.5, Exemption, removes reference to the Mitigation Banking Program as a “pilot” and incorporates mandatory changes that enable mitigation easements to be held by third parties approved by USDA.
- In § 12.6, Administrative, incorporates changes to address eligibility determinations for Federal crop insurance premium subsidies; adds reference to conservation plan requirements in accordance with the 2014 Farm Bill; adds reference to NRCS authority to implement the Mitigation Banking Program; and adds reference to RMA’s administrative authorities.
- In § 12.7, Certification of compliance, adds provisions and a reference to § 12.13, Special Federal crop insurance premium subsidy provisions, for the timely filing of a certification of compliance (Form AD-1026) to be eligible for Federal crop insurance premium subsidy.
- In § 12.9, Landlords and tenants, adds clarity and consistency and changes references from “renter” to “sharecropper”.

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- Adds § 12.13, Special Federal crop insurance premium subsidy provisions consistent with the RMA regulations in §§ 402.4(f), 407.9 section 7(h), and 457.8 section 7(h), as amended through their rule published July 1, 2014.
- In § 12.31, On-site wetland identification criteria, changes reference from “the National List of Plant Species that Occur in Wetlands” to “the National Wetland Plant List or (as determined by NRCS) its successor publication.”

### Public Comment Sought

This rule is published with a 60 day public comment period. In addition to seeking comments generally on the new regulatory provisions and seeking comment in response to E.O. 13563, Improving Regulation and Regulatory Review, and E.O. 13610, Identifying and Reducing Regulatory Burdens, USDA is seeking specific comment on the following issues:

- USDA has a goal of working with farmers to help them stay in compliance or bring them into compliance through progressive planning and implementation. USDA asks for comments regarding additional steps that could be taken to achieve this goal. Additionally, are there steps USDA should consider to ensure wetland benefits are retained?
- What information could USDA collect to simplify the process, expedite determinations and allow review to identify more complex determination requests for prioritization purposes?
- What information could USDA reasonably collect that would provide more information on derived conservation benefits from conservation compliance activities? What would be the burden of collecting that information?
- With the addition of new persons being subject to conservation compliance, how should USDA prioritize evaluation of requests?

**June 30, 1 2014** – RMA published Interim Rule that requires producers to have an AD 1026 on file by June 1<sup>st</sup> prior to each reinsurance year.

**July 2014** – USDA issued a press release; updated the general HELC/WC factsheet; made available an updated Form AD-1026 that was later revised after receiving feedback from the specialty crop community (see November); Developed a process flow chart to assist producers with understanding how the compliance process works; NRCS sent a “farm bill highlights” message to State Conservationists alerting them to the changes that impact NRCS workload; and agencies updated their national websites as appropriate.

**Summer 2014** – National level stakeholder meetings

**August 2014** – RMA, FSA and NRCS conducted a webinar for specialty crop growers and associations that can be downloaded and reused. The webinar was followed by a web posting of frequently asked questions (FAQs) that were updated in February 2015. The FAQs are also available in PDF format.

**September 2014** – Updated web sites with compliance products and tools to inform producers.

Following public feedback received in the summer of 2014, NRCS begins developing the Mitigation Banking Program Requirements.

**October 2014** – Completed briefing of Hill Agriculture Committee Conservation staff. Invited all stakeholder groups to a meeting at USDA to outline the re-linking of crop insurance to compliance.

**November** – FSA provides a streamlined AD 1026 that reduces the information necessary for producers of certain crops to complete their certification. Concurrently, products were posted on the web addressing questions and input received from producer organizations. Products include a factsheet specifically for specialty crop producers; a wetland information sheet that provides information on producer options; a factsheet about “affiliated persons”; and a list of “agriculture commodities” as defined by conservation compliance provisions.

FSA, RMA and NRCS conducted national level training via webinar in the “train the trainer” format. The webinar was designed to be downloaded and used for field office training. The training was followed by a posting of FAQs. NRCS conducted regional VTCs following the national training to ensure state offices were able to get all their questions answered and to clarify any follow-up concerns.

FSA and NRCS state offices conducted a workload assessment and developed an implementation strategy to ensure resources are available in high workload areas. State offices begin training field staffs.

**December 2014** – RMA sent out 55,000 letters to producers who had crop insurance in 2011, 2012, and 2013 but did not have an AD 1026 on file.

**November 2014-January 2015** - FSA, NRCS, RMA completed joint agency training to states and field personnel. Initiated local outreach meetings in the high concentration areas as determined by the RMA mailing.

**January – February 2015** – Held several teleconferences with the Specialty Crop Farm Bill Alliance to discuss outreach and collaboration;

## Compliance Timeline 04/16/2015

Both State offices developed outreach implementation plans and reported plans to NRCS national office. Information was shared with the Specialty Crop Farm Bill Alliance

**February 25<sup>th</sup>** – RMA issues Managers Bulletin to all insurance companies to let them know RMA has provided them a full list of each of their customers who still needs to complete an AD 1026.

**March** – prepared message for stakeholder organizations for broad distribution reminding producers of the certification requirement and deadline for submitting AD-1026 to FSA.

**April through May** – FSA, RMA and NRCS field offices will work together to ensure local producer groups publicize the deadline for the AD 1026.

**Week of April 13<sup>th</sup>** – USDA will make available the conservation compliance Interim Rule. Agencies will release information about the regulation to their State office staffs. Publish in the Federal Register the week of April 20<sup>th</sup> with a 60 day public comment period.

**Week of April 13<sup>th</sup>** – RMA will send a follow up letter to producers who have not completed their AD 1026.

**Week of May 11<sup>th</sup>** – FSA will send out a final post card to any producers who have not filled out their AD 1026.

**June 2014 through present day:** FSA, RMA and NRCS collaborated on developing implementation processes for each step of the compliance process and coordinating eligibility determinations. This is a lengthy process that addresses initial producer filing, records transfer, determinations, record development, appeals procedure, financial management (collections and disbursements for payments in lieu, equitable contributions, and ineligibility), producer notifications, software modifications, and reporting requirements.

**June 1<sup>st</sup> 2015**– If an AD 1026 is not on a file with FSA, a producer is not eligible for Federal crop insurance premium subsidy for any policy or plan of insurance for the 2016 reinsurance year (July 1, 2015 -June 30, 2016) unless that person begins farming for the first time after June 1<sup>st</sup> 2015.



## **Conservation Compliance and Crop Insurance**

### **Fact Sheet**

*April 2015*

#### **Overview**

Conservation compliance requires producers to have a conservation plan approved by and on file with USDA if they plant annually tilled crops on highly erodible soil, and prohibits producers from planting on converted wetlands or converting wetlands for crop production.

The 2014 Farm Bill requires producers, and any affiliated individuals or entities to participating producers, to comply with these provisions who participate in most programs administered by the Farm Service Agency (FSA), the Natural Resources Conservation Service (NRCS), and the Risk Management Agency (RMA). Non-compliance may affect the following types of USDA program benefits:

- FSA loans and disaster assistance payments
- NRCS and FSA conservation program benefits
- Federal crop insurance premium support

#### **Compliance with HELC and WC Provisions**

Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) provisions (known as “conservation compliance”) aim to reduce soil loss on erosion-prone lands and to protect wetlands for the multiple benefits they provide. HELC and WC provisions apply to all land that is considered highly erodible or a wetland, and that is owned or farmed by persons voluntarily participating in USDA programs, unless USDA determines an exemption applies.

To comply with the HELC and WC provisions, producers and affiliated persons must fill out and sign form AD-1026 certifying they will not:

- Plant or produce an agricultural commodity on highly erodible land without following an NRCS approved conservation plan or system;
- Plant or produce an agricultural commodity on a converted wetland; or
- Convert a wetland which makes the production of an agricultural commodity possible.

In addition, producers planning to conduct activities that may affect their HELC or WC compliance, for example removing fence rows, conducting drainage activities, or combining fields, must notify FSA by filing form AD-1026. FSA will notify NRCS, and NRCS will then provide highly erodible land or wetland technical evaluations and issue determinations if needed.

A copy for form AD-1026 can be found at [www.fsa.usda.gov/ad1026form](http://www.fsa.usda.gov/ad1026form).

#### **Agricultural Commodity**

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

#### **Highly Erodible Land**

Highly erodible land is any land that can erode at excessive rates because of its soil properties and/or is designated by field and based on the proportion of the total field acreage that contains highly erodible soils.

Producers who produce agricultural commodities on land identified as highly erodible are required to farm such land in accordance with a conservation plan or system that is approved by NRCS and that substantially reduces soil loss. Producers proposing to produce agricultural commodities on highly erodible land that has no crop history prior to Dec. 23, 1985 (known as sodbusting), are required to farm such land in accordance with a conservation plan or system that provides for no substantial increase in soil erosion. A conservation plan or system to reduce soil erosion is not required for land that is not highly erodible.

## Wetland

A 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.

## Explanation of Affiliated Persons Who Need to File an AD-1026 for HELC and WC Compliance Purposes

An “affiliated person” is an individual or entity who has a specific connection to the individual or entity completing the AD-1026. Affiliated persons could be family members or business partners. The following table describes who or what are considered affiliated persons.

IF the producer is	THEN the affiliated persons who need to file an AD-1026 are
An individual	<p>The individual’s spouse or minor children, if they have a farming interest            For all entity types(except for a corporation (see rule for corporations below) in which the individual has any interest at the first level if they have a farming interest  <b>Note:</b> To better understand what is an interest at the first level, see the scenario and analysis for WXYZ Partnership below.            Corporations in which the individual or the individual’s spouse or minor children have more than 20 percent interest at the first level if they have a farming interest  <b>Note:</b> To better understand what is an interest of more than 20 percent in a corporation at the first level, see the scenario and analysis for ABC Inc. below.</p>
An entity other than a corporation	<p>All members/interest holders at the first level in the entity if they have a farming interest  <b>Scenario:</b> WXYZ General Partnership has the following interest holders and indicated interest as follows:            Individual W.... 25 percent            - X LLC ..... 25 percent            - Y Inc. .... 25 percent            - Individual Z.... 25 percent  <b>Analysis:</b> The affiliated persons of WXYZ General Partnership would be <u>Individual W</u>; <u>X LLC</u>; <u>Y Inc.</u>; and <u>Individual Z</u> because they are members of the general partnership at the first level. The interest holders in X LLC and Y Inc. would <b>not</b> be affiliated persons of WXYZ Partnership because they are not interest holders in WXYZ General Partnership at the first level.</p>
A corporation	<p>Interest holders at the first level in the corporation with more than 20 percent interest if they have a farming interest  <b>Scenario:</b> ABC Inc. has the following interest holders and indicated interest as follows:            Individual A – 15 percent            Corporation C – 85 percent            Corporation C is 100 percent owned by Individual B  <b>Analysis:</b> Only <u>Corporation C</u> is considered an affiliated person to ABC Inc. Individual A does not have more than a 20 percent interest in ABC Inc. and Individual B only holds an indirect interest in ABC Inc. through Corporation C and, therefore is <b>not</b> an interest holder at the first level.</p>

### **AD-1026 Filing Requirement for Affiliated Persons**

Although an individual or entity may be considered an affiliated person to a producer requesting benefits, an affiliated person who does not have a farming interest does not need to file an AD-1026. A “farming interest” for this purpose is an owner, operator or other producer on any farm. An example of an affiliated person who does not need to file an AD-1026 is a minor child that does not have a farming interest.

### **NRCS and FSA Roles in Making Determinations**

When making HELC and WC compliance determinations:

NRCS responsibilities include:

- For HELC compliance:
  - Making highly erodible determinations;
  - Working with producers to develop conservation plans and systems; and
  - When required, determining if highly erodible land is being farmed in accordance with a conservation plan or system approved by NRCS.
- For WC compliance:
  - Making wetland determinations, including establishing if certain technical exemptions apply, such as prior converted cropland; and
  - Determining if a wetland conversion has occurred.

FSA makes eligibility determinations, such as who is ineligible based upon NRCS technical determinations of HELC or WC non-compliance. FSA also acts on requests for the application of certain eligibility exemptions, such as the good faith relief exemption.

### **Highly Erodible Land and Wetland Identification**

FSA maintains the official USDA records of highly erodible land and wetland determinations. The determinations are recorded 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 the producer's land. Producers may obtain aerial imagery of their farms and a printout of their farm and tract records from the FSA office servicing their farm. If a producer is uncertain of the highly erodible land and wetland determinations applicable to their land, the producer should contact the appropriate USDA Service Center for assistance. The following link will help in locating local USDA Service Centers: <http://offices.usda.gov> .

### **HELC and WC Non-Compliance**

The 2014 Farm Bill re-established the applicability of the HELC and WC provisions to crop insurance financial support. The Act made no change in HELC and WC implementation with respect to NRCS and FSA programs.

### **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 specific exemptions apply, a producer participating in FSA and NRCS programs must be in compliance with an NRCS approved conservation plan or system for all highly erodible land used for agricultural commodity production; 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 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 of the subsequent year.

## **HELIC and WC Non-Compliance - Risk Management Agency – Policies Reinsured by the Federal Crop Insurance Corporation**

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

- Has not filed an accurately completed AD-1026 with FSA certifying compliance with HELIC and WC provisions; or
- Is not in compliance with HELIC and WC provisions. Unless specific exemptions apply, a producer must:
  - Be in compliance with a NRCS-approved conservation plan for all highly erodible land;
  - Not plant or produce an agricultural commodity on a wetland converted after Feb. 7, 2014; and
  - Not have converted a wetland after Feb. 7, 2014, to make possible the production of an agricultural commodity.

A producer is ineligible for any premium support paid by FCIC on all policies and plans of insurance for the reinsurance year(s) (July 1 – June 30) following the reinsurance year of a final determination of a violation of HELIC or WC provisions, including all administrative appeals, unless specific exemptions apply. Further, a producer will be ineligible for any premium support paid by FCIC on all policies and plans of insurance for the reinsurance year if they do not have a completed form AD-1026 on file with FSA certifying compliance on or before June 1 prior to the beginning of the subsequent reinsurance year (July 1), unless otherwise exempted.

### **Regaining Eligibility for Benefits Lost Because of a Violation**

Producers who are found to be in violation of HELIC or WC provisions, but acted in good faith and without the intent to violate, may file a request to regain eligibility for the period in violation at the FSA office where their farm records are administered. If the request is approved, producers are required to take corrective action within an established period. There are exemptions that may apply in limited circumstances.

### **Additional Information**

For additional information on HELIC and WC compliance, contact the FSA office or the NRCS office at a local USDA Service Center at <http://offices.usda.gov>. Additional information can be found online at [www.fsa.usda.gov/compliance](http://www.fsa.usda.gov/compliance) for FSA, [www.nrcs.usda.gov](http://www.nrcs.usda.gov) for NRCS and [www.rma.usda.gov](http://www.rma.usda.gov) for RMA. The regulations covering these provisions are set forth in the Code of Federal Regulations at 7 CFR Part 12.

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