

Conservation Compliance and the 2014 Farm Bill



06/13/2012

Today's Agenda

- **Welcome and purpose.**
- **Background**
- **The New Farm Bill compliance requirements.**
- **Producer certification of compliance.**
- **Understanding conservation compliance and the 2014 Farm Bill.**
- **Key dates to remember.**
- **How to get more information and assistance.**
- **Questions and Answers.**

Background

The Food Security Act was enacted on December 23, 1985. Title XII of this Act introduced 2 conservation provisions to address environmental concerns associated with soil erosion and wetland conversion:

- Highly Erodible Land (HEL) Conservation, or the “Sodbuster” provision
- Wetland Conservation, or “Swampbuster”

Background continued

Purpose. The purpose of the provisions is to remove certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby—

- (1) Reduce soil loss due to wind and water erosion;
- (2) Protect the Nation's long-term capability to produce food and fiber;
- (3) Reduce sedimentation and improve water quality; and
- (4) Assist in preserving the values, acreage, and functions of the Nation's wetlands.

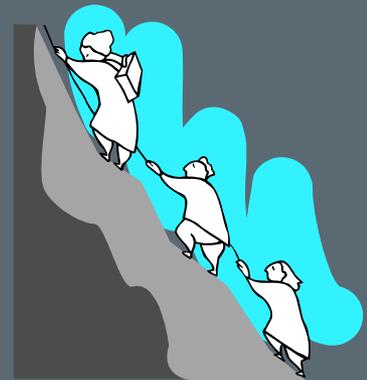
Agricultural Act of 2014

Re-linked federally subsidized Crop Insurance with Conservation Compliance.



Working Together

FSA, NRCS and RMA are working together to implement the provisions of the 2014 Farm Bill linking crop insurance premium subsidy to HELC/WC Compliance



Impact of 2014 Farm Bill

All persons seeking any premium subsidy, regardless of crops grown or insured, must certify compliance:

- Current FSA or NRCS program participants are subject to conservation compliance and not impacted by linking eligibility for premium subsidy to conservation compliance
- Persons new to compliance will be provided additional time to come into compliance
- Persons not in compliance can still buy crop insurance but will not be eligible for premium subsidy

New and Specific to Crop Insurance ONLY

- Administratively Final Determination (AFD)
- Reinsurance year (July 1-June 30)
- February 7, 2014 (Agriculture Act of 2014, signed)
- First-time filer
- Crop insurance premium assistance (subsidy)
- Timely evaluation
- Equitable contribution

Certification of Compliance

- The AD-1026 is the form for producers to certify compliance
- To be eligible for the crop insurance premium subsidy for the next reinsurance year (beginning July 1, 2015) producers must have an AD-1026 on file certifying their HELC/WC compliance by

June 1, 2015



Filing AD-1026

Who has to file?

- Anyone requesting benefits
- Affiliated persons with farming interests

When do they file?

- Before eligible for payment/benefit
- For premium subsidy, June 1 before the reinsurance year

Continuous certification



New Version of AD-1026 and AD-1026 Appendix

- Revised versions issued October 30, 2014
- Any previously filed version of AD-1026 remains valid if no changes to answers and no violation
- No requirement to provide producers new version of AD-1026 Appendix until new AD-1026 filed



AD-1026 and AD-1026 Appendix (10-30-14)

Reasons for Changes:

- Accommodate needs of broader range of producers who are required to provide certification of compliance with HELC/WC provisions
- Provide additional clarity

Note: No substantive change for FSA and NRCS customers.

Wetland Conservation Compliance

For Wetland Conservation Compliance, a producer is certifying they will **NOT**:

(1) Convert a wetland by draining, dredging, filling, leveling, removing woody vegetation, or any other activity that results in impairing or reducing the flow and circulation of water in a way that would allow the planting of an agricultural commodity.

(2) **NOT** to use proceeds from any FSA farm loan, insured or guaranteed, or any USDA cost-share program, in such a way that might result in negative impacts to a wetland, except for those projects evaluated and approved by NRCS.

Highly Erodible Land Conservation Compliance

For Highly Erodible Land Compliance a producer agrees that they will not plant or produce an agricultural commodity on highly erodible land unless it is farmed in accordance with a conservation plan approved by NRCS.

Reporting Activities on Form AD-1026

- Producers must notify FSA and update Form AD-1026 if conducting activities that may affect their certification.
- FSA will subsequently notify NRCS and NRCS will provide highly erodible land or wetland technical determinations or a conservation plan if needed.
 - FSA will delineate the specific field requiring a highly erodible land determination
 - FSA will mark the specific wetland areas for determination
- NRCS will use the appropriate methods to complete the determination referred by FSA.

Form AD-1026

- AD-1026 was modified to incorporate the new provisions relating to crop insurance. A checkbox was added for producers to indicate they are “new to compliance”.
- Producers new to compliance will need to have HEL determinations for their land if producing ag commodities for the year of certification.
- Wetland determinations may be needed if the producer indicates that modifying drainage systems is planned or if new drainage systems are planned to be installed.
- AD-1026 is a continuous certification and only needs to be updated or revised when the producer plans to take an action that will affect how the questions are answered.

Overview of AD-1026

This form is available electronically. (See Page 2 for Privacy Act and Paperwork Reduction Act Statements)

AD-1026
(10-30-14)

U.S. DEPARTMENT OF AGRICULTURE
FarmServiceAgency

**HIGHLY ERODIBLE LAND CONSERVATION (HELIC) AND
WETLAND CONSERVATION (WC) CERTIFICATION**

Read attached AD-1026 Appendix before completing form.

PART A – BASIC INFORMATION

1. Name of Producer _____ 2. Tax Identification Number (Last 4 digits) _____ 3. Crop Year _____

4. Names of affiliated persons with farming interests. Enter "None," if applicable. _____

Affiliated persons with farming interests must also file an AD-1026. See Item 7 in the Appendix for a definition of an affiliated person.

5. Check one of these boxes if the statement applies; otherwise continue to Part B.

A. The producer in Part A does not have interest in land devoted to agriculture. Examples include bee keepers who place their hives on another person's land, producers of crops grown in greenhouses, and producers of aquaculture AND these producers do not own/lease any agricultural land themselves. **Note:** Do not check this box if the producer shares in a crop.

B. The producer in Part A meets all three of the following:

- does not participate in any USDA program that is subject to HELIC and WC compliance except Federal Crop Insurance.
- only has interest in land devoted to agriculture which is exclusively used for perennial crops, except sugarcane, and
- has not converted a wetland after February 7, 2014.

Perennial crops include, but are not limited to, tree fruit, tree nuts, grapes, olives, native pasture and perennial forage. A producer that produces alfalfa should contact the Natural Resources Conservation Service at the nearest USDA Service Center to determine whether such production qualifies as production of a perennial crop.

Note: If either box is checked, and the producer in Part A does not participate in Farm Service Agency (FSA) or Natural Resources Conservation Service (NRCS) programs, the full tax identification number of the producer must be provided, but establishment of detailed farm records with FSA is not required. Go to Part D and sign and date.

PART B - HELIC/WC COMPLIANCE QUESTIONS

Indicate YES or NO to each question.
If you are unsure of whether a HEL determination, wetland determination, or NRCS evaluation has been completed, contact your local USDA Service Center.

	YES	NO
6. During the crop year entered in Part A or the term of a requested USDA loan, did or will the producer in Part A plant or produce an agricultural commodity (including sugarcane) on land for which an HEL determination has not been made?		
7. Has anyone performed (since December 23, 1985), or will anyone perform any activities to:		
A. Create new drainage systems, conduct land leveling, filling, dredging, land clearing, or excavation that has NOT been evaluated by NRCS? If "YES", indicate the year(s): _____		
B. Improve or modify an existing drainage system that has NOT been evaluated by NRCS? If "YES", indicate the year(s): _____		
C. Maintain an existing drainage system that has NOT been evaluated by NRCS? If "YES", indicate the year(s): _____ Note: Maintenance is the repair, rehabilitation, or replacement of the capacity of existing drainage systems to allow for the continued use of wetlands currently in agricultural production and the continued management of other areas as they were used before December 23, 1985. This allows a person to reconstruct or maintain the capacity of the original system or install a replacement system that is more durable or will realize lower maintenance or costs.		
Note: If "YES" is checked for Item 7A or 7B, then Part C must be completed to authorize NRCS to make an HELIC/WC and/or certified wetland determination on the identified land. If "YES" is checked for Item 7C, NRCS does not have to conduct a certified wetland determination.		
8. Check one or both boxes, if applicable; otherwise, continue to Part C or D.		
A. <input type="checkbox"/> Check this box only if the producer in Part A has FCIC reinsured crop insurance and filing this form represents the <u>first time</u> the producer in Part A, including any affiliated person, has been subject to HELIC and WC provisions.		
B. <input type="checkbox"/> Check this box if either of the following applies to the producer and crop year entered in Part A:		
• is a tenant on a farm that is/will not be in compliance with HELIC and WC provisions because the landlord refuses to allow compliance, but all other farms not associated with that landlord are in compliance. (AD-1026B, Tenant Exemption Request, must be completed).		
• is a landlord of a farm that is/will not be in compliance with HELIC and WC provisions because of a violation by the tenant on that farm, but all other farms not associated with that tenant are in compliance. (AD-1026C, Landlord or Landowner Exemption Request, must be completed).		

AD-1026, Part A

PART A – BASIC INFORMATION

1. Name of Producer

2. Tax Identification Number *(Last 4 digits)*

3. Crop Year

4. Names of affiliated persons with farming interests. *Enter "None," if applicable.*

Affiliated persons with farming interests must also file an AD-1026. See Item 7 in the Appendix for a definition of an affiliated person.

5. Check one of these boxes if the statement applies; otherwise continue to Part B.

- A. The producer in Part A does not have interest in land devoted to agriculture. Examples include bee keepers who place their hives on another person's land, producers of crops grown in greenhouses, and producers of aquaculture AND these producers do not own/lease any agricultural land themselves. **Note:** Do not check this box if the producer shares in a crop.
- B. The producer in Part A meets all three of the following:
- does not participate in any USDA program that is subject to HELC and WC compliance except Federal Crop Insurance.
 - only has interest in land devoted to agriculture which is exclusively used for perennial crops, except sugarcane, and
 - has not converted a wetland after February 7, 2014.

Perennial crops include, but are not limited to, tree fruit, tree nuts, grapes, olives, native pasture and perennial forage. A producer that produces alfalfa should contact the Natural Resources Conservation Service at the nearest USDA Service Center to determine whether such production qualifies as production of a perennial crop.

Note: *If either box is checked, and the producer in Part A does not participate in Farm Service Agency (FSA) or Natural Resources Conservation Service (NRCS) programs, the full tax identification number of the producer must be provided, but establishment of detailed farm records with FSA is not required. Go to Part D and sign and date.*

If Box 5B is Checked

If producer checks box 5B and certifies compliance in Part D:

- FSA will:
 - establish eligibility record by loading basic producer information in SCIMS
 - record date of producer filing AD-1026
- FSA will NOT:
 - establish farm and tract records
 - refer AD-1026 to NRCS for technical determination

Affiliated Persons

<p><i>IF the producer requesting benefits is a (an) . . .</i></p>	<p><i>THEN affiliated persons with farming interests who must be in compliance with HELC and WC provisions and file Form AD-1026 are. . .</i></p>
<p>individual</p> <p>NOTE For a minor, parents or guardians shall be listed as affiliated persons .</p>	<p>spouses or minor children with separate farming interests, or who receive benefits under their individual ID number.</p> <p>estates, trusts, partnerships, and joint ventures in which the individual filing, or the individual's spouse or minor children have an interest.</p> <p>corporations in which the individual filing or the individual's spouse or minor children have more than 20% interest.</p>
<p>general partnership</p> <p>limited partnership</p> <p>limited liability company</p> <p>joint venture</p> <p>estate</p> <p>irrevocable or revocable trust</p> <p>Indian tribal venture or group</p>	<p>first level members of the entity.</p>
<p>corporation with stockholders</p>	<p>first level shareholders with more than 20% interest in the corporation.</p> <p>Note: First level shareholders of a corporation with 20% interest or less in the corporation are not considered affiliated persons of the corporation.</p>

AD-1026, Part B

PART B - HELCWC COMPLIANCE QUESTIONS		
Indicate YES or NO to each question. <i>If you are unsure of whether a HEL determination, wetland determination, or NRCS evaluation has been completed, contact your local USDA Service Center.</i>	YES	NO
6. During the crop year entered in Part A or the term of a requested USDA loan, did or will the producer in Part A plant or produce an agricultural commodity (including sugarcane) on land for which an HEL determination has not been made?		
7. Has anyone performed (since December 23, 1985), or will anyone perform any activities to:		
A. Create new drainage systems, conduct land leveling, filling, dredging, land clearing, or excavation that has NOT been evaluated by NRCS? <i>If "YES", indicate the year(s): _____</i>		
B. Improve or modify an existing drainage system that has NOT been evaluated by NRCS? <i>If "YES", indicate the year(s): _____</i>		
C. Maintain an existing drainage system that has NOT been evaluated by NRCS? <i>If "YES", indicate the year(s): _____</i> Note: <i>Maintenance is the repair, rehabilitation, or replacement of the capacity of existing drainage systems to allow for the continued use of wetlands currently in agricultural production and the continued management of other areas as they were used before December 23, 1985. This allows a person to reconstruct or maintain the capacity of the original system or install a replacement system that is more durable or will realize lower maintenance or costs.</i>		
Note: <i>If "YES" is checked for Item 7A or 7B, then Part C must be completed to authorize NRCS to make an HELCWC and/or certified wetland determination on the identified land. If "YES" is checked for Item 7C, NRCS does not have to conduct a certified wetland determination.</i>		
8. Check one or both boxes, if applicable; otherwise, continue to Part C or D.		
A. <input type="checkbox"/> Check this box only if the producer in Part A has FCIC reinsured crop insurance and filing this form represents the <u>first time</u> the producer in Part A, including any affiliated person, has been subject to HELC and WC provisions.		
B. <input type="checkbox"/> Check this box if either of the following applies to the producer and crop year entered in Part A: <ul style="list-style-type: none"> • Is a tenant on a farm that is/will not be in compliance with HELC and WC provisions because the landlord refuses to allow compliance, but all other farms not associated with that landlord are in compliance. (AD-1026B, Tenant Exemption Request, must be completed). • Is a landlord of a farm that is/will not be in compliance with HELC and WC provisions because of a violation by the tenant on that farm, but all other farms not associated with that tenant are in compliance. (AD-1026C, Landlord or Landowner Exemption Request, must be completed). 		

AD-1026, Part C

PART C – ADDITIONAL INFORMATION

9. If "YES" was checked in Item 6 or 7, provide the following information for the land to which the answer applies:

- A. Farm and/or tract/field number: _____
If unknown, contact the Farm Service Agency at the nearest USDA Service Center.
- B. Activity: _____
- C. Current land use (*specify crops*): _____
- D. County: _____

AD-1026, Part D

PART D – CERTIFICATION OF COMPLIANCE

I have received and read the AD-1026 Appendix and understand and agree to the terms and conditions therein on all land in which I (or the producer in Part A if different) and any affiliated person have or will have an interest. I understand that eligibility for certain USDA program benefits is contingent upon this certification of compliance with HELC and WC provisions and I am responsible for any non-compliance. I understand and agree that this certification of compliance is considered continuous and will remain in effect unless revoked or a violation is determined. I further understand and agree that:

- all applicable payments must be refunded if a determination of ineligibility is made for a violation of HELC or WC provisions.
- NRCS may verify whether a HELC violation or WC has occurred.
- a revised Form AD-1026 must be filed if there are any operation changes or activities that may affect compliance with the HELC and WC provisions. I understand that failure to revise Form AD-1026 for such changes may result in ineligibility for certain USDA program benefits or other consequences.
- affiliated persons are also subject to compliance with HELC and WC provisions and their failure to comply or file Form AD-1026 will result in loss of eligibility for applicable benefits to any individuals or entities with whom they are considered affiliated.

Producer's Certification:

I hereby certify that the information on this form is true and correct to the best of my knowledge.

10A. Producer's Signature (By)	10B. Title/Relationship (If Signing in Representative Capacity)	10C. Date (MM-DD-YYYY)
FOR FSA USE ONLY (for referral to NRCS) Sign and date if NRCS determination is needed.	11A. Signature of FSA Representative	11B. Date (MM-DD-YYYY)

Processing the AD-1026

Once completed by the producer the following actions may be taken depending on the producers certification.

- No determinations required (perennial crops and all “no” answers in part B) – FSA completes the administrative process with no referral to NRCS
- Determinations previously made – FSA notes producers who have previously received determinations and there are no HEL fields, or wetlands. FSA provides the information to the producer and there is no referral to NRCS.

Processing the AD-1026 (cont'd)

- Determinations needed because of “yes” answers in part B – FSA refers the AD-1026 with fields to be used for ag commodity production or wetland areas to NRCS – NRCS schedules and completes the determination.
- NRCS provides determinations and appeal rights to the producer.

Conservation Compliance

Unless an exemption applies, a person will be ineligible for premium subsidy beginning the reinsurance year after the reinsurance year the person is determined in violation and all administrative appeals are exhausted (administratively final determination).



Crop Insurance Participants

Timing of Ineligibility

- Ineligibility for premium subsidy will only apply to reinsurance years after the date of a final determination of a violation, including all administrative appeals
- Ineligibility for premium subsidy will not apply to the existing reinsurance year or any reinsurance year prior to the date of final determination



All of these clocks – when do they start ticking?



- After all of the administrative appeals have been exhausted = an “administratively final determination”
- This includes after NAD decisions, but does not include any judicial review

Additional Time for Producers new to Conservation Compliance

For eligibility for premium subsidy only:

- Producers who have never been subject to conservation compliance before have:
 - 2 reinsurance years to initiate a mitigation plan following a final Converted Wetland determination.
 - 5 reinsurance years to develop and implement a conservation plan for HEL

Other Timelines

For eligibility for premium subsidy only:

- For wetlands, persons have 1 reinsurance year to initiate a mitigation plan following a final Converted Wetland determination.
- For HEL, producers who have been subject to compliance in the past, stopped participating in programs subject to compliance, and currently are in violation, have 2 reinsurance years to comply with a conservation plan to maintain eligibility.

Wetland Conversions When a Policy or Plan is Available for the First Time

- Ineligibility for that policy or plan only applies for wetland conversions that are completed after the policy or plan becomes available
- However, all converted wetlands must be mitigated in a timely manner, not to exceed 2 reinsurance years after the policy becomes available.

Good Faith for Wetland Conservation

- The Good Faith determination process has not changed as a result of the new Farm Bill.
- FSA may waive the ineligibility provisions for 2 reinsurance years to allow the person to remedy or mitigate the converted wetland, or the planting on a converted wetland.

Equitable Contribution

- Applies to crop insurance participants and wetland compliance provisions only.
- For producers who are found in violation, this monetary contribution applies when a producer has not certified or has falsely certified their compliance.
- These producers will be asked to pay an equitable contribution to NRCS for each year the person was in violation of the WC provisions. The amount will not exceed the total of the crop insurance premium subsidies paid during the years of violation.

Agricultural Commodities

- Conservation compliance prohibits or restricts certain activities that involve an “agricultural commodity”



Agricultural Commodity

- An agricultural commodity is any crop planted and produced by annually tilling the soil, and sugarcane.
- Examples would include tomatoes, potatoes, onions, carrots, corn, soybeans, cotton, wheat, rice, barley, canola.
- A conservation compliance crop list has been provided at www.nrcs.usda.gov/compliance

Not Agricultural Commodities

- Citrus crops
- Orchard crops
- Sugar Bush (maple syrup)
- Vineyards
- Blueberries
- Rangeland
- Pastureland



Perennial Crops – Caution on Wetland Conversion

- Although conversion of wetlands to certain perennial crops is an exempted activity, it does place important restrictions on the future use of that land. If the orchard or vineyard is ever removed, commodity crop production is then made possible. It does not matter if a commodity crop is planted. Making “the production of a commodity crop possible,” is a compliance violation.

Perennial Crops – Renovation or Leaving Land Idle

- Leaving land idle with no agricultural commodity planted or produced on the land is not a violation of the provisions as long as a non-agricultural commodity is intended to be planted there in the future.
- Producers are encouraged to contact their local USDA Service Center to obtain information and assistance regarding their specific farming operation situation.

Annual Cover Crops on Converted Wetlands

Occasionally, annual tilled cover crops such as clover and rye grass are grown in orchards, vineyards, blueberries, and other perennial crop fields. If these lands are converted wetlands, this will not result in a violation unless the annual cover crop reaches maturity or is harvested. The use of nonagricultural commodity cover crops, such as clover or other biennials is compliant.



Cover Crops on HEL

- For HEL, planting a cover crop on a field that is designated as HEL must be done in accordance with an approved conservation plan if the field is planted to agricultural commodities.



Priority Technical Assistance

- The new Farm Bill requires NRCS to provide priority Technical Assistance to “first-time filers”
- Certifications will need to be evaluated “in a timely manner” or ineligibility for wetland conversions will not apply



Crop Insurance Producer Exemptions

- Eligibility for Federal crop insurance premium subsidy is not affected by wetland conversions that were completed, as determined by NRCS, before February 7, 2014.



Key trigger date

- Producers who convert a wetland after 2-7-14 could be found to be in violation and ineligible for crop insurance premium subsidy in the reinsurance year following the reinsurance year of the final determination, including all appeals.



Payment in Lieu for Wetland Mitigation

- This is a one time only option available for wetlands impacting less than 5 acres.
- A Crop-Insurance producer will be able to pay NRCS 150% of the cost of mitigating a wetland rather than creating a mitigation site.
- For crop insurance participation only.

Compliance Determinations

- The re-linking did not change the wetland or HEL determination processes.
- Only the field used for agricultural commodity production in the year certified are referred to NRCS for HEL determinations, or specific fields where wetlands are marked as manipulated for wetland determinations.
- Determinations are only done for areas identified in response to producer certifications (Form AD-1026).

Key Dates

- Spring of 2015 – updated compliance regulation (7CFR12) to be published
- June 1, 2015 – deadline for crop insurance producers to file Form AD-1026 for the 2016 reinsurance year (starting July1, 2015)

Looking Ahead

- State Executive Directors and State Conservationists are expected to work together in establishing orderly servicing processes and staffing to meet the workload created by the new customers.
- Materials have been sent out from the Regional Conservationists Office on November 10th, describing the need to complete a workload assessment no later than December 6th.

Information and Assistance

- Additional information can be found online at www.fsa.usda.gov for FSA, www.nrcs.usda.gov for NRCS and www.rma.usda.gov for RMA.
- www.nrcs.usda.gov/compliance
- Your State/National Leadership



The U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay).

USDA is an equal opportunity provider and employer.

Questions and Answers

