

Conservation Compliance and the 2014 Farm Bill



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Agricultural Act of 2014

- Recouples federally subsidized Crop Insurance with Conservation Compliance.
- Provides NRCS with ten million dollars to operate a program to establish/use wetland mitigation banks.
- New national reporting requirement on Wetland/HEL determination progress and backlog.

No change for traditional USDA customers.

- Producers who have traditionally participated in Title I (FSA) or Title II (conservation programs) should see no new changes to conservation compliance.
- Approximately 10,000 to 14,000 producers will be impacted by the 2014 Farm Bill according to RMA.
- Producers not in conservation compliance can still buy crop insurance but will no longer be eligible for premium subsidies paid through RMA.

Rules and Policy

- Currently writing the Interim Rule in consultation with FSA and RMA. Target Date – November 2014.
- We are currently updating the NFSAM to incorporate the new Farm Bill provisions.
- Policy for the 2014 Farm Bill will come out in advance (Circular or Bulletin).
- Outdated language in the NFSAM is being updated.

State Reviewers

- Following the development of the first draft of the NFSAM we will ask states to submit a reviewer to review the updated NFSAM. We are looking for a total of 5-7 folks with a mix of HEL and WC expertise.



The FSA AD-1026

- The 1026 Form has been modified to incorporate the new Crop Insurance Provisions (6-30-14). Item #3 has been added for producers to indicate they are “new to compliance”.
- The 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.
- Producers new to compliance will need to have HEL determinations for their land if producing ag commodities. Wetland determinations may be needed if lines 2A or 2B are checked “YES” .
- The Statute requires that we do not duplicate or create excessive paperwork to implement the Farm Bill for compliance certification.

Failure to Certify Compliance

- Producers new to compliance will be ineligible for the premium crop insurance subsidy for the subsequent crop insurance year (July 1, 2015) if they do not have a 1026 on file certifying their HELC/WC compliance prior to June 1, 2015.



Equitable Contribution Penalty

- Crop Insurance Participants – are Subject to Equitable Contribution
- For producers who are found in violation, this penalty applies when they have not certified or have falsely certified their compliance.
- Only applies to wetland compliance provisions.
- 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.

Timely Evaluation Exemption

- *A crop insurance producer who does not receive timely evaluation of a certification cannot be found to be ineligible for USDA programs.*
- **Guidance will be forthcoming as to what timely evaluation time period is.**
- The timely evaluation provision only applies to wetland determinations, and it only applies to crop insurance producers.

Commodity Crops – As it applies to producers new to compliance

- It is important to know that the new conservation compliance requirements along with the original requirements only apply to commodity (annually tilled) crops.



Ag Commodity FSA 6-CP (Exhibit 2)

Agricultural Commodity

An agricultural commodity is any crop planted and produced by annual tilling of the soil, including tilling by 1-trip planters or sugarcane.

Example 1: Producer plants a wildlife food plot to wheat.

Example 2: Annual rye grass.

Example 3: Producer plants wheat as cover crop on a field that includes converted wetland.

Nonexample 1: Alfalfa.

Nonexample 2: Perennial grasses.

Note: Certain crops, such as strawberries, may or may not meet the definition of an agricultural commodity based upon the producer's planting practice.

Note: Alfalfa, when in rotation with a commodity crop such as annual grain, will need to be treated as an ag commodity for practical purposes.

Priority Technical Assistance

- *The new Farm Bill requires NRCS to provide priority Technical Assistance to “producers new to compliance”, what does new to compliance mean?*
- Generally these will be specialty crop producers or other producers who have not participated in traditional USDA programs other than crop insurance. A new check box has been added to the 1026 for producers to indicate they haven't been subject to compliance in the past.

Priority Technical Assistance

- *What does priority technical assistance mean?*
- This will be left up to each individual State Conservationist in consultation with the Regional Conservationist. The Department wants consistency in this process.



Conservation Plan verses System

- *The new Farm Bill Statute Language says that producers new to compliance have 5 years to develop and implement a conservation “Plan”.*
- *Traditionally compliance with a conservation system has been acceptable. So do the new folks need a plan or an approved system?*
- As advised by OGC, a written plan will be required.

HELC/WC Violations

- In the case of an unresolved compliance violation a person is ineligible for premium crop insurance beginning one re-insurance year (July 1 – June 30) after all administrative appeals (including NAD) have expired.



Crop Insurance Only Producer Exemptions

- Producers who only participate in the premium crop insurance subsidy programs offered through RMA can plant on a converted wetland that was converted prior to 2-7-2014 without risking loss of these benefits.



Trigger Date 2-7-2014

- Producers who convert a wetland after 2-7-14 could be found to be in violation and risk being ineligible for the crop insurance premium subsidy in the following crop insurance year. A crop insurance year begins in July.



Payment in Lieu for Wetland Mitigation

- This is a one time only option available for wetlands less than 5 acres in size.
- A Crop-Insurance-only producer will be able to pay NRCS 150% of the cost of mitigating a wetland rather than creating a mitigation site. This will include Land Costs and Easement costs in addition to the restoration costs.

Payment in Lieu Cost Determination

NRCS will use regional payment schedules for the appropriate restoration practices along with current WRP land and related easement cost information.



Wetland Mitigation Timelines

- For crop insurance purposes only, producers who have been subject to compliance in the past have one year to initiate a mitigation plan following a final CW determination.
- If the producer is “new to compliance,” they have 2 years to mitigate the violation following a final CW determination.

HEL violation timelines

- Producers who have never been subject to compliance have 5 years to develop and implement a conservation plan.
- Producers who have been subject to compliance in the past and currently are in violation, have two years to comply with a conservation plan to regain eligibility.

Tech Guide and New Participants

As we begin implementing this new Farm Bill we are likely going to discover gaps in our Tech Guide relating to applying conservation systems for crops that NRCS has not traditionally provided assistance for.....



Reporting to Congress

- We are required to report our HEL and WC request progress and backlog to Congress no later than November 1. A bulletin (NB -190-14-12) requesting this information from each state has been issued.
- States need to continually track their progress and backlog of HEL and WC determination requests.

Fact Sheets -Brochures

- A 2014 Farm Bill developments informational sheet covering the major changes to the Farm Bill has been issued.
- Compliance brochures, fact sheets, and related informational materials will be forthcoming.



Outreach and Information

- *What will we see coming out from NHQ in the next few months related to the Farm Bill?*
- Good Outreach Information.
- Listening sessions have been scheduled in IA, MN, ND, and SD – not directly related to crop insurance provisions

Wetland Mitigation Banking Program

- NRCS will work with third parties or operate a program to establish wetland mitigation banks.
- USDA is no longer required to be the easement holder for wetland mitigation banks.



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