



FAQ

frequently asked questions

Conservation Compliance

Updated 01/28/2015

1. Category – General

A. What are the Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) provisions?

HELC requires persons, in order to receive certain USDA benefits, to use a Natural Resources Conservation Service (NRCS) approved conservation plan if they plant an agricultural commodity, defined by USDA as an annually tilled crop or sugarcane, on fields determined to be highly erodible. WC makes producers ineligible for certain USDA benefits if they produce an agricultural commodity on a converted wetland, defined by USDA as an annually tilled crop or sugarcane, or make such production possible.

B. What is an agricultural commodity?

For conservation compliance purposes, an agricultural commodity is defined as a crop that is planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane. Crops that are annually tilled are considered agricultural commodities. Perennial or permanent crops grown on trees, vines, or bushes are not considered agricultural commodities for purposes of conservation compliance and are referred to as a “non-agricultural commodity”.

C. Is grazing land considered an agricultural commodity?

For conservation compliance purposes, an agricultural commodity is a crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, and sugarcane. If what is being grazed is planted and produced by annual tilling of the soil, it is an agricultural commodity.

D. Is a no-till crop considered an agriculture commodity?

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

E. I only participate in federal crop insurance and only have pastureland which is not an agricultural commodity. Why do I need to be concerned with whether or not I have converted a wetland after February 7, 2014?

Although pasture is not an agricultural commodity, the conversion of a wetland to pasture has made the production of an agricultural commodity possible. Because making agricultural commodity production possible is a violation of the WC provisions, producers with pasture and other non-commodity crops must certify that they have not converted a wetland after February 7, 2014.

F. Who is subject to conservation compliance?

All persons seeking benefits under most programs administered by the Farm Service Agency (FSA) and NRCS and premium subsidy paid by the Federal Crop Insurance Corporation (FCIC) for any policy or plan of federally reinsured crop insurance, are subject to conservation compliance.

G. Does the 2014 Farm Bill change existing compliance provisions associated with the loss of program payments, conservation programs, credit programs, etc.?

No. The 2014 Farm Bill did not change existing conservation compliance provisions as they relate to FSA and NRCS programs. The Farm Bill re-linked crop insurance to conservation compliance and provided exemptions for compliance specific to crop insurance.

H. Is conservation compliance required for Apiculture, Pasture & Rangeland Forage and/or Livestock crop insurance?

Yes, conservation compliance is required for eligibility for the premium subsidy on all policies and plans of crop insurance. For producers of only non-agriculture commodities this may be nothing more than filing the form AD-1026 and signing the producer self-certification. Note that conservation compliance applies to eligibility for the benefit (the premium subsidy in the case of crop insurance), but the benefit itself does not have to be based on an "agricultural commodity."

I. Do I need to have a completed certification of compliance, form AD-1026 filed with FSA, to be eligible for premium subsidy on my crop insurance policies?

Yes, to be eligible for federal crop insurance premium subsidy producers must sign and file form AD-1026 with FSA by June 1, 2015 for the 2016 reinsurance year (July 1, 2015 – June 30, 2016). However, only producers that grow an agricultural commodity, defined as a crop which is planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane, must also be in compliance with the HELC and WC provisions.

J. Why is eligibility for crop insurance premium subsidy subject to the HELC and WC provisions?

Since the 1985 Farm Bill, eligibility for most commodity, disaster, and conservation programs has been linked to conservation compliance. The 2014 Farm Bill relinks HELC and

WC compliance with the premium subsidy paid by the Federal Crop Insurance Corporation (FCIC) under the federal crop insurance program.

K. Why is conservation compliance important?

The purpose of conservation compliance is to reduce soil loss due to erosion; protect the Nation's long-term ability to produce food and fiber; reduce sedimentation and improve water quality; and assist in preserving the values, acreage, and functions of the Nation's wetlands.

L. What should I do if I have never participated in any FSA or NRCS commodity, conservation, or disaster program, but want to be eligible for premium subsidy for my crop insurance policies?

You should contact your local FSA Service Center to complete the AD-1026 certification form. If you grow an agricultural commodity, even if the agricultural commodity is not the crop for which you are seeking a premium subsidy, you will also have to establish the records necessary to ensure you are in compliance with the HELC and WC provisions. Depending on your specific farming operation, you may be required to obtain a conservation plan or other records from NRCS. For those impacted by this requirement for the first time, there are modified timeframes and prioritized resources dedicated to assist you.

M. Where can I find more information about HELC and WC provisions?

Contact your local USDA Service Center Office for more information. Additional information can be found on-line at

<http://www.fsa.usda.gov/FSA/webapp?area=home&subject=pmel&topic=cce>

<http://www.nrcs.usda.gov/compliance>

N. How will I know if I have HEL or wetlands?

When you file form AD-1026, FSA will let you know if previous certified determinations have been made on the land. If there are fields to be used for annual crop production that have never had an HEL determination or locations identified and needing certified wetlands determination, FSA will refer the form AD-1026 to NRCS for determinations.

O. What constitutes a wetland?

Wetlands must meet all three of these criteria under normal conditions—the presence of hydric soils, the presence of hydrophytic (water tolerant) vegetation and the presence of hydrology that would or could support hydrophytic vegetation. Presence of water by itself does not constitute a wetland. Similarly, the temporary absence of water due to dry conditions or the temporary absence of hydrophytic vegetation due to manipulation do not constitute a non-wetland.

P. I do not have any HEL or wetlands on my farm. Am I subject to conservation compliance?

Yes. All persons seeking a USDA program benefit subject to conservation compliance are subject to the provisions and must have form AD-1026 on file with FSA.

2. Category—Certifying Compliance on the Form AD-1026

About the form AD-1026: The form AD-1026, Certificate of Compliance, is used to inform the person of the HELC and WC requirements, certify compliance with the HELC and WC provisions, identify persons affiliated with the person completing the form, and provide authorization for USDA representatives to service their determination request and spot check compliance with the HELC and WC provisions. For producers who receive federal premium subsidy payments but do not produce an agriculture commodity, form AD-1026 serves as the official document of the producer's current eligible status.

See <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/AD1026.PDF> for a copy of the form. The form AD-1026 is a continuous certification, which means that once it is accurately completed and filed it remains effective and a person does not have to refile or update the form again, unless there are changes to the operation or new activities that occur that affect the person's certification. The form is not crop specific but covers all land a producer farms.

A. Who must file form AD-1026?

All persons seeking a USDA program benefit subject to conservation compliance, including federal crop insurance premium subsidy, must complete, sign and file form AD-1026 with the Farm Service Agency (FSA). In addition, any affiliated person that has a separate farming interest must also complete, sign and file form AD-1206.

B. What am I certifying to on the form AD-1026?

By signing form AD-1026, the person certifies receipt of the form AD-1026 appendix, and agrees to all of the following on all land in which the person, and any affiliated person to the person, has an interest:

- NOT to plant or produce an agricultural commodity on highly erodible land or fields unless being farmed in accordance with a conservation plan or system approved by the Natural Resources Conservation Service (NRCS).
- NOT to plant or produce an agricultural commodity on a converted wetland.

- NOT to 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.
- 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.

C. If I previously filed form AD-1026 do I need to refile or is my initial filing still valid?

If you previously filed form AD-1026 it remains in effect. A new form AD-1026 does not need to be filed as long as the answers on the previously filed form AD-1026 have not changed (in other words, the producer is not planning any new activities that have not been evaluated, etc.) and there has been no violation of conservation compliance provisions negating the previously filed form AD-1026.

D. Why can't producers who do not plant "agricultural commodities" certify that they are exempt from the conservation compliance mandate or certify that they are only growing exempted crops? No additional action should be necessary.

The 2014 Farm Bill does not exempt any producer or land from the conservation compliance provisions. However, based on their specific operation they may have no additional requirements than to file and sign the form AD-1026. In addition, the 2014 Farm Bill states that the Secretary shall use existing processes and procedures for certifying compliance. Therefore, all producers seeking benefits from programs that are subject to conservation compliance need to file form AD-1026. Having one process for all producers who participate in programs that are subject to conservation compliance provides fair and equal treatment to all producers regardless of what crops a producer grows or which program benefits a producer is seeking to obtain.

Producers, and their affiliates who only have interest in land that is used to produce non-agricultural commodities, will not be found out of compliance if they plant non-agricultural commodities on highly erodible land or on a converted wetland. However, a producer can become ineligible for program benefits, including federal crop insurance premium subsidy, for all of their operations, if they violate the HELC or WC provisions on any land in which they have an interest. In addition, if land that was devoted to a non-agricultural commodity is subsequently planted to an agricultural commodity, such action can result in a violation of the conservation compliance provisions if the land is highly erodible or a converted wetland.

E. Can form AD-1026 be electronically filed?

No.

F. Will USDA minimize paperwork burden for specialty crop producers on form AD-1026 and reduce or eliminate the need for any additional certifications, determinations, site visits, etc.?

USDA shares the public's interest in minimizing administrative burden on its customers. Therefore, the form AD-1026 and related procedures address the minimum information needed from a person to ensure the person is in compliance with the HELC and WC provisions. USDA has the responsibility for implementing the compliance provisions in accordance with law and therefore cannot eliminate wetland and highly erodible land determinations that are needed to ensure producers are in compliance.

The form AD-1026 provides for continuous certification, which means that once it is accurately completed and filed it remains effective and the person does not have to refile or update the form again, unless there are changes or activities that occur that affect the certification of the person.

G. Does the filing of form AD-1026 require NRCS to make site visits on farms to verify the type of activity (exempt or covered) that is occurring there? If not, how will the information be confirmed?

No, filing the form does not automatically result in a NRCS site visit. NRCS may visit a farm or ranch if the producer indicates "yes" in any of the questions in Part B, HELC/WC Compliance Questions, or when the producer's farm or ranch is selected for quality assurance purposes. NRCS has technical tools to make HEL determinations and some wetland determinations remotely. The producer will be notified of all determinations and provided the opportunity to request reconsideration or appeal the determination. When a producer's farm or ranch is selected for a quality assurance spot check, NRCS will verify the accuracy of the certification which may require a site visit.

H. I purchase crop insurance directly from an insurance agent. I do not receive any other program payments from USDA. Do I have to file form AD-1026?

Yes, all persons seeking eligibility for the federal crop insurance premium subsidy must have an accurately completed and signed form AD-1026 on file with FSA certifying compliance with the conservation compliance provisions. You may obtain federally re-insured crop insurance without having form AD-1026 on file with FSA, but you will be responsible for the full premium amount for all policies.

I. I am in compliance with a conservation plan approved by NRCS. What documents must I complete to be eligible for federal crop insurance premium subsidy?

All persons seeking eligibility for federal crop insurance premium subsidy must have an accurately completed and signed form AD-1026 on file with the FSA certifying compliance with the conservation compliance provisions. A completed and signed form AD-1026 must be on file with FSA by June 1, 2015, for the 2016 reinsurance year (July 1, 2015 – June 30, 2016), and you, and any affiliated person, must be in compliance with the HELC and WC provisions. Any person who does not have form AD-1026 on file with FSA on or before June

1, 2015, can obtain crop insurance, but will be responsible for the full premium amount for all policies and plans of insurance they obtain for the 2016 reinsurance year.

J. I grow perennial crops why is there not a box on the form AD-1026 that says I'm not covered by conservation compliance?

All persons seeking a USDA program benefit subject to conservation compliance are subject to the provisions and must have form AD-1026 on file with the Farm Service Agency. Conservation compliance applies to eligibility for the benefit (the premium subsidy in the case of crop insurance), but the benefit itself does not have to be based on an "agricultural commodity." As of October 30, 2014, the form AD-1026 was revised providing an option for non-agriculture commodity producers to certify they are not producers of agricultural commodities in box 5. After completing box 5 these producers may then complete form AD-1026 by signing the certification.

K. What happens to a producer who files form AD-1026 after June 1, 2015?

A person must have form AD-1026 on file with FSA on or before June 1, 2015, and comply with the conservation compliance provisions to be eligible for the federal crop insurance premium subsidy on any crop insurance policy or plan of insurance for the 2016 reinsurance year (July 1, 2015 – June 30, 2016). Any person who does not have form AD-1026 on file with FSA on or before June 1, 2015 can obtain crop insurance, but will be responsible for the full premium amount for all policies and plans of insurance they obtain for the 2016 reinsurance year.

L. Should producers be filing form AD-1026 for wildlife food plots?

Any person, and their affiliated persons (if the affiliated person has a separate farming interest), who seeks eligibility for any USDA benefit that is subject to conservation compliance must file form AD-1026. However, for areas that are less than 2 acres in size, USDA will not make a determination of non-compliance with the HELC provisions.

3. Category—Farm Records

A. Some farmers are not in the Farm Service Agency's (FSA) system and thus do not have assigned FSA farm numbers. If I do not have a FSA farm number for my operation, how will I receive an eligibility determination for the federal crop insurance premium subsidy?

All persons seeking eligibility for federal crop insurance premium subsidy must have an accurately completed and signed form AD-1026 on file with FSA certifying compliance with the conservation compliance provisions. FSA will work with the filers to establish the necessary records to communicate the eligibility determination to the Risk Management Agency (RMA) for crop insurance subsidies. If you do not have form AD-1026 on file by June 1, you will be ineligible for federal crop insurance premium subsidy on all policies and

plans of insurance the following reinsurance year. Conservation compliance applies to eligibility for the benefit (the premium subsidy in the case of crop insurance), but the benefit itself does not have to be based on an “agricultural commodity.”

4. Category—Compliance

A. The statute gives those who are subject to compliance for the first time additional time to develop and comply with a conservation plan. While it is important for any individual to fill out and file form AD-1026 before June 1 next year, please clarify the schedule for those who are subject to compliance for the first time.

Producers must have an accurately completed and signed form AD-1206 on file with the Farm Service Agency (FSA) by June 1, 2015, to be eligible for federal crop insurance premium subsidy for the 2016 reinsurance year (July 1, 2015 – June 30, 2016). If a producer does not know whether they are in compliance they should schedule a discussion with the Natural Resources Conservation Service (NRCS) or the FSA for assistance.

The 2014 Farm Bill provides persons who are subject to the provisions for the first time additional time to develop and comply with a conversation plan if they have highly erodible land, and to remedy certain wetland violations, if determined. The additional time only applies to certain persons and only to eligibility for federal crop insurance premium subsidy. USDA will publish a conservation compliance interim final rule that will provide details on the new conservation compliance requirements and exemptions as it relates to eligibility for federal crop insurance premium subsidy.

B. Who determines if land is highly erodible or a wetland for HELC and WC purposes?

The NRCS makes technical determinations for HELC and WC purposes. Producers are notified in writing of any determination completed on their land and will be provided opportunity for reconsideration and appeals.

C. What do I do if I am uncertain about the status of my land regarding HEL or wetlands?

You should contact your local USDA Service Center Office (<http://offices.sc.egov.usda.gov/locator/app>) to find out about the status of any determinations regarding HEL or wetlands on your farm(s). When you file your certification of compliance on form AD-1026, FSA will let you know if there are any existing HEL or wetland determinations on your land, and whether NRCS needs to make any evaluations.

D. Is there technical assistance available for farmers and ranchers who are subject to the HELC and WC provisions for the first time because of the 2014 Farm Bill?

If you are subject to the HELC and WC provisions for the first time because of the 2014 Farm Bill, you will receive priority for NRCS conservation technical assistance in developing and applying a conservation plan or in making a wetland determination. Please contact your local NRCS office for assistance. To find your local USDA Service Center office, visit <http://offices.sc.egov.usda.gov/locator/app>

E. How do I know if I am in compliance with HELC and WC provisions?

If you are currently in compliance for commodity, conservation, or disaster programs administered by the FSA or NRCS, you are in compliance with HELC and WC provisions for crop insurance. If you are not sure of your eligibility or you are not participating in any FSA or NRCS commodity, conservation, or disaster program, you can contact your local USDA Service Center office to determine if you are in compliance with the HELC and WC provisions.

F. Does a violation of the HELC or WC provisions on one of my farms result in ineligibility for premium subsidy only on the crops on that farm or will I be ineligible for premium subsidy on all my crop insurance policies?

A violation of the HELC or WC provisions on any acreage will result in ineligibility for premium subsidy for all crop insurance policies under the federal crop insurance program, unless you meet the requirements for an exemption that limits the ineligibility.

G. Are producers still eligible for crop insurance premium subsidies while they are working to come into compliance (wetland and HEL)?

Yes, provided the producer meets the necessary requirements, certain timeframes are provided during which a producer can remain eligible for federal crop insurance premium subsidies if they are taking the required steps to remedy a violation. If a producer is entering the compliance system for the first time as a result of compliance being attached to crop insurance in the 2014 Farm Bill, special timeframes for being in compliance apply.

H. If a producer purchases a new farm or starts renting a new farm that is out of compliance, is there a grace period for bringing that farm into compliance?

There is no such specific "grace period." However, if the "out of compliance" situation is a wetland conversion for which the producer was in no way responsible, the requirement is simply that the producer cannot plant an agricultural commodity on the converted wetland. For HEL compliance, if the producer is planting an agricultural commodity on the new farm, they need to do so in accordance with a conservation plan approved by NRCS.

I. If a producer is farming wetland acreage that was converted after 1985 but prior to Feb. 7, 2014, will the producer be eligible for premium subsidy?

Yes, the producer would be eligible for federal crop insurance premium subsidy. Ineligibility for premium subsidy only applies to conversions occurring after Feb. 7, 2014. However, the described situation may affect eligibility for FSA and NRCS program benefits.

5. Category—Federal Crop Insurance Eligibility

A. How will eligibility for federal crop insurance premium subsidy be affected by conservation compliance?

The 2014 Farm Bill relinks HELC and WC compliance with the premium subsidy paid by the Federal Crop Insurance Corporation (FCIC) under the federal crop insurance program. A violation of the HELC or WC provisions on any acreage will result in ineligibility for the premium subsidy for all crop insurance policies under the federal crop insurance program, unless you meet the requirements for an exemption that limits the ineligibility.

B. Do the conservation compliance provisions in any way limit crop insurance eligibility based on income or financial status?

No.

C. For diversified operations that involve exempt and covered crops where the producer has elected NOT to purchase crop insurance on their covered crops (or if no policy is available), how will that decision affect their ability to purchase crop insurance on their exempt crops? Will their covered crops be required to be compliant, even if they receive no benefit via the federal crop insurance subsidy?

The conservation compliance provisions do not affect what crops may be insured or a person's ability to obtain federal reinsured crop insurance. The conservation compliance provisions apply to all land in which the person has an interest, not just the land or crops for which the person is seeking program benefits or crop insurance. Therefore, a person must be in compliance with the conservation compliance provisions on all their land in order to be eligible for federal crop insurance premium subsidy. The 2014 Farm Bill does not exempt any producer or land from the conservation compliance provisions.

D. Many producers farm in multiple counties or even states. Will conservation compliance for crop insurance be applied on a farm-by-farm basis?

Conservation compliance applies to all land that a person has an interest in, not on an individual farm basis. A violation of the conservation compliance provisions on any land will result in ineligibility for premium subsidy for ALL crop insurance policies under the Federal crop insurance program, unless the person meets the requirements for an exemption that limits the ineligibility.

E. Many specialty crop producers are involved in diversified operations that may include both exempt and covered crops. Assuming that crop insurance has been purchased for each individual crop, if such a producer becomes out of compliance on a covered crop, how will that status affect their ability to purchase crop insurance for the exempt crops that are part of the agriculture operation?

The 2014 Farm Bill does not exempt any producer or land from the conservation compliance provisions. Conservation compliance provisions impact the person's eligibility for the federal premium subsidy. To be eligible for the federal premium subsidy for any crop, the person must be in compliance on all lands in their operation.

F. Is crop insurance available for purchase on non-agricultural commodity crops such as blueberries or vineyards?

Federally subsidized crop insurance is available for certain types of grapes and blueberries in certain counties. Check with a local crop insurance agent for additional information.

G. There are approximately 38 different crop insurance products available for specialty crops. How many policies (or farms) are covered under these products?

Crop insurance program participation can be researched through Risk Management Agency's (RMA) Summary of Business Reports website at

<http://www.rma.usda.gov/data/sob.html>

H. Are premium subsidies available for non-agricultural commodities?

The federal crop insurance premium subsidy is available for the majority of policies and plans of insurance offered under the Federal Crop Insurance Act, including non-agricultural commodities.

I. Can I obtain crop insurance under the federal crop insurance program if I have not completed a certification of compliance, form AD-1026, filed with FSA by June 1, 2015, or I am not in compliance with HELC or WC provisions?

Yes, you may obtain crop insurance, but you will be responsible for the full premium amount for all policies for the 2016 reinsurance year. The FCIC will not pay any premium subsidy on your behalf.

J. I only insure my livestock and pasture. I do not insure any annually planted crops, and I do not participate in any FSA or NRCS programs. Do I need to have a completed certification of compliance on form AD-1026 filed with FSA to be eligible for premium subsidy on my livestock and pasture insurance policies?

Yes, to be eligible for premium subsidy on any policy under the federal crop insurance program you must have a completed and signed form AD-1026 on file with the Farm Service Agency (FSA) by June 1, 2015 to be eligible for premium subsidy for the 2016 reinsurance year. If you grow any agricultural commodities, as defined by USDA, you will also have to be in compliance with applicable HELC and WC provisions.

K. Do I need to provide any forms or documents to my crop insurance agent to show I am in compliance with the HELC and WC provisions? How will my crop insurance agent know if I am eligible for premium subsidy paid by FCIC?

No, you are not required to provide any forms or documents to your crop insurance agent regarding your compliance with the HELC and WC provisions. Your agent will be informed, through the RMA, of your eligibility for premium subsidy based on your filing form AD-1026 form with your local FSA office.

L. Will my insurance provider be able to tell me if I am ineligible for premium subsidy before the sales closing date for my crop insurance policy?

Yes. The deadline for filing form AD-1026 is June 1, 2015, to be eligible for premium subsidy for the 2016 reinsurance year. Therefore, any determination of ineligibility will be provided to the producer and RMA. Determinations of ineligibility made after the filing of form AD-1026 will become final after all administrative appeals are completed. Then, ineligibility will apply to the following crop reinsurance year.

M. How does ineligibility for premium subsidy impact my Catastrophic Risk Protection (CAT) policy?

You will be responsible for paying the full premium amount for your CAT policy if you are ineligible for premium subsidy. FCIC will not pay any premium subsidy on your behalf.

6. Category—Violations, Appeals and Corrective Actions

A. How will violations, appeals and corrective actions be handled?

The Agricultural Act of 2014 (2014 Farm Bill) made no changes to how violations and appeals are handled for USDA programs previously subject to conservation compliance. However, the 2014 Farm Bill did provide different rules and options regarding federal crop insurance premium subsidy. The major difference is that a violation of the conservation compliance provisions results in ineligibility for premium subsidy in the reinsurance year following the year in which the final determination, including all administrative appeal, occurs, not the reinsurance year when the violation occurred or any prior reinsurance year.

B. Does loss of eligibility for federal crop insurance premium subsidy apply to only the farm on which the violation occurs?

A violation of the conservation compliance provisions on any acreage will result in ineligibility for premium subsidy for ALL crop insurance policies on ALL farms under the federal crop insurance program, unless you meet the requirements for an exemption that limits the ineligibility.

C. Who will enforce compliance violations?

The Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA) make determinations of violations of the conservation compliance provisions. Eligibility for federal crop insurance premium subsidy will be based on those determinations.

D. Will basic management activities on my farm such as cleaning an existing drainage ditch result in a violation of the conservation compliance provisions?

Not in most cases. Cleaning an existing drainage ditch would be considered “maintenance” which is an exempted activity, provided the ditch existed in 1985 and its cleaning does not expand the original capacity. 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. For crop insurance only participants, maintenance will be allowed to the capacity of the drainage system as it existed on February 7, 2014.

E. If a producer is farming wetland acreage that was converted after 1985 but prior to Feb. 7, 2014, is the producer eligible for premium subsidy?

Yes, the producer would be eligible for the federal crop insurance premium subsidy. However, the described situation would affect eligibility for FSA and NRCS program benefits.

F. Why is the “payment in lieu” only a one-time option?

While this provision provides flexibility to a person for remedying a small acreage wetland violation, the intent is to limit the scope of its availability, specifying that it applies to “impacts less than 5 acres of the entire farm.” To ensure program integrity and compliance with the intent of the Farm Bill, a person is limited to only one exception per farm. Note that this provision provides a remedy only for crop insurance premium subsidy eligibility, and not for FSA and NRCS program benefits.

G. If someone drains a wetland in a vineyard after Feb. 7, 2014 and then rips out those grape vines to start growing an annual crop to get crop insurance, are they in violation?

In this case, the person would be producing an agricultural commodity on a wetland converted after February 7, 2014, and would be in violation of the conservation compliance provisions.

H. In regard to paying 150 times the mitigation amount of a wetland - how is that dollar figure calculated?

NRCS is currently working through different options for the calculation of this cost.

I. If the wetland was converted before February 7, 2014, and the producer plants corn in 2015, is there a problem?

This would not be a violation for purposes of eligibility for the federal crop insurance premium subsidy. However, assuming the wetland was converted after December 23, 1985, it would be a wetland conservation violation for FSA and NRCS program purposes.

7. Category—Tenants and Questions about Leased Land

A. How are producers working leased HEL or wetlands handled?

A violation of the conservation compliance provisions on any acreage, including leased land, will result in ineligibility for premium subsidy for ALL crop insurance policies under the federal crop insurance program, unless you meet the requirements for an exemption that limits the ineligibility.

8. Category—Affiliated Persons

A. What is an affiliated person under the conservation compliance provisions?

An affiliated person is a person, including entities, that has an interest in the person who is requesting USDA benefits that are subject to the conservation compliance provisions. For example, if the person requesting a USDA benefit is an individual, the affiliated persons could include the individual's spouse, minor children, and any estate, trust, joint venture, partnership or similar entity in which the individual had an interest. If the individual had a greater than 20 percent interest in a corporation, the corporation would be an "affiliated person" to the individual.

B. If a joint venture has a crop insurance policy, do all members of the joint venture listed on the policy have to complete form AD-1026?

The joint venture must complete form AD-1026 if the joint venture has an Employer Identification Number. In addition, the members of the joint venture that have a separate farming interest must complete form AD-1026. All members of the joint venture must complete form AD-1026 if the joint venture does not have an Employer Identification Number.

C. Can you discuss "affiliated party/related party" more? How does it apply if someone is a contract grower for a large shipper? Would the shipper be affiliated?

Being a contract grower for a shipper does not, in and of itself, make the shipper "affiliated persons" for conservation compliance purposes. Generally, an "affiliated person" of an individual seeking conservation compliance is the individual's spouse and minor children, and any entity in which the individual has an interest as a member,

stockholder, etc. An “affiliated person” of an entity would be the members of the entity. Producers should contact their local USDA Service Center’s Farm Service Agency (FSA) office for answers to their specific situation.

D. If someone is listed as a Substantial Beneficial Interest (SBI) of an entity for crop insurance purposes, aren’t they automatically to be considered as affiliated?

The definition of affiliated persons doesn’t seem to match the explanation given on the webinar.

No, an SBI, under the terms of a crop insurance policy, is not automatically considered an affiliated person for conservation compliance purposes. Each term, SBI and affiliated person designations are defined.

9. Category—Substantial Beneficial Interest

A. What is a substantial beneficial interest for federal crop insurance purposes?

A substantial beneficial interest is an interest held by any person of at least 10 percent in the insured person. For example, if there are two partnerships that each have a 50 percent interest in the insured person and each partnership is made up of two individuals, each with a 50 percent share in the partnership, then each individual would be considered to have a 25 percent interest in the insured person, and both the partnerships and the individuals would have a substantial beneficial interest in the insured person.

B. Are all persons with a substantial beneficial interest in an insured automatically an affiliated person under the conservation compliance provisions?

No. The rules for determining if a person has a substantial beneficial interest in an insured and the rules for determining if a person is an affiliated person are different. A person can have a substantial beneficial interest in an insured but not be an affiliated person to the insured. For example, a minor child is an affiliated person to the parent; however, a minor child is not considered to have a substantial beneficial interest in the parent, when the parent is an insured, unless the minor child has a separate legal interest in the insured parent.

C. How is my premium subsidy affected if a person with a substantial beneficial interest in me, as an insured, is determined to be in violation of the conservation compliance provisions but I am not in violation of those provisions?

When a person with a substantial beneficial interest in an insured person is in violation of the conservation compliance provisions, the premium subsidy for the insured person will be reduced proportionately by the percentage of the person with a substantial beneficial interest.

D. Does a person with a substantial beneficial interest in an insured have to complete form AD-1026 in order for the insured person to be eligible for Federal crop insurance premium subsidy?

No, a person with a substantial beneficial interest in an insured does not have to complete form AD-1026 unless the person is also an affiliated person with a separate farming interest. However, if a person with a substantial beneficial interest in an insured is in violation of the conservation compliance provisions the insured's premium subsidy will be reduced proportionately by the percentage of the person with a substantial beneficial interest. For example, a person who is in violation of the conservation compliance provisions has a substantial beneficial interest of 25 percent in an insured. The insured person's premium subsidy will be reduced by 25 percent on that policy.

10. Category—Impact of Production Practices on Certification

A. The production practices within the specialty crop industry vary by commodity. In many cases, exempted commodities engage in regular replanting of new trees, vines, shrubs, etc. to keep an agriculture operation healthy. In other cases, phytosanitary issues or lack of adequate water may require acreage to be placed in an idle state temporarily. Does crop acreage that is replanted or made temporarily idle remain in its exempt status, so long as an exempted crop is intended to be planted there in the future?

The 2014 Farm Bill does not exempt any producer or land from the conservation compliance provisions. 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.

B. Will cover crops have to meet HEL/ wetland conservation provisions?

All land in which a producer has an interest must comply with the highly erodible land and wetland conservation provisions to be eligible for USDA benefits subject to these provisions. As a general rule, cover crops interplanted with orchards and vineyards will not trigger compliance determinations. However, planting an agricultural commodity crop, including a cover crop that reaches maturity or is harvested, on a converted wetland, including converted wetland within an orchard or vineyard, violates the wetland conservation provisions. An agricultural commodity is defined as a crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, and sugarcane. The use of nonagricultural commodity cover crops, such as clover or other biennials is compliant. 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.

C. In my orchard operation, I use cover crops between the rows. Part of this orchard is located on a converted wetland. Am I allowed to plant cover crops between the rows in the converted wetland area?

The planting of an agricultural commodity on a converted wetland is generally not allowed. However, in this case, the wetland is exempt since the purpose of the wetland conversion was not for agricultural commodity crop production. Thus, this farming practice would be allowed as long as the agricultural commodity cover crop is destroyed by mechanical or chemical means prior to seed head development. Biennial crops such as clovers would not need to be destroyed.

D. If I am farming on prior converted wetlands, what restrictions are there on replacing or improving tile on those farms?

As indicated in Part B of form AD-1026, the producer should indicate “yes” to item 7B if the producer will improve or modify an existing drainage system that has not been evaluated by NRCS. Replacing and improving tile may be an option if it does not further impact remaining/existing wetland functions that may be present in the field. Indicating yes will result in NRCS scheduling a field visit with the producer to discuss the specific situation.

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