

Q&A

questions and answers

2014 Farm Bill Conservation Compliance

These questions were collected following the November 13, 2014 webinar for USDA employees to learn about key changes to conservation compliance and the revised form AD-1026. To view slides from the webinar visit

<http://www.conservationwebinars.net/webinars/2014-farm-bill-conservation-compliance/?searchterm=compliance>

COMPLIANCE CERTIFICATION PROCESS

1. If an entity type changes but the members of the entity do not change, such as a partnership changing to a corporation, will the new entity be considered subject to the conservation compliance provisions for the first time and be provided additional time to develop and comply with a conservation plan?

If the **original entity** was subject to the conservation compliance provisions, then the new entity is not considered subject to the provisions for the first time if any of the members of the new entity were an affiliated person of the original entity. Producers should contact their local Farm Service Agency (FSA) office for answers to their specific situation.

2. When the Natural Resources Conservation Service (NRCS) makes a compliance determination, does NRCS provide the determination to the producer, the Risk Management Agency (RMA) and FSA?

NRCS provides compliance determinations to owners, operators and FSA. New determinations will include the right for a producer to request reconsideration and appeal. FSA will provide the necessary documentation to RMA.

3. How does RMA plan to verify compliance for affiliates?

RMA does not verify any person's compliance with the conservation compliance provisions. NRCS and FSA are the agencies responsible for verifying a person's compliance as has been the process since the 1985 Farm Bill. A person's eligibility for federal crop insurance premium subsidies will be based on NRCS and FSA compliance determinations.

4. How will producers, who are subject to compliance for the first time, be identified?

Producers subject to compliance for the first time will be identified through the compliance certification process using form AD-1026 and a review of existing compliance records within USDA for the person and the land. Producers must certify compliance no later than June 1, 2015 to be eligible for federal crop insurance premium subsidies in the 2016 reinsurance year (July 1, 2015 – June 30, 2016).

PLAN REQUIREMENT

5. If there is documentation available showing a producer has been following an acceptable conservation system do they still need a written conservation plan to be eligible for federal crop insurance subsidies?

No, only producers determined to have highly erodible fields who are subject to compliance for the first time and producers who are currently ineligible for USDA programs due to a conservation compliance violation need a conservation compliance plan. Note that conservation plans for compliance purposes are only required to meet soil erosion treatment on highly erodible fields, or address wetland restoration or mitigation requirements.

6. How long do we (NRCS) have to get a written highly erodible land (HEL) conservation plan done for producers who are subject to the conservation compliance provisions for the first time, verses producers who were previously subject to the provisions?

NRCS needs to provide quality, “timely assistance” to all their customers. The phrase “timely assistance” will be further defined when the regulation is published. Persons subject to conservation compliance for the first time have five reinsurance years following the administratively final determination date for highly erodible land determinations to develop and comply with the requirements of a conservation plan to maintain eligibility for federal crop insurance premium subsidies. Existing or previous FSA and NRCS program participants may continue implementing a conservation system or plan to maintain federal crop insurance premium subsidy eligibility.

7. What is the difference between a conservation system and a conservation plan?

A conservation system is a group of individual conservation practices (such as a crop rotation, terraces, and grassed waterways) that are used to treat a natural resource concern (soil erosion in this instance). A conservation plan is the record of decisions (which practices will be used) and supporting information (producer’s decisions and the alternatives that were developed) that are used to develop a conservation system. For HEL conservation compliance, a conservation plan may serve as the documentation of an existing system that achieves the soil erosion compliance requirements. HEL conservation plans are only required to address sheet and rill, ephemeral and wind erosion treatment.

8. Is there a strict requirement to follow the prescribed schedule in the conservation plan once the producer signs it?

Generally, producers are to follow a schedule identified in the conservation plan. However, there are variance exemptions for things like drought, disease, and personal hardship. A producer should contact NRCS and request a revised conservation plan if they are unable to follow the agreed to schedule in their current plan. Persons subject to HEL conservation provisions for the first time have additional time to develop and comply with a conservation plan, if needed, before being ineligible for federal crop insurance premium subsidies. A person that falls behind on their plan will be allowed to revise their conservation plan to achieve the objectives within the time requirement.

9. If a person plants a cover crop that is not in a written plan, will they lose eligibility for programs subject to conservation compliance, including federal crop insurance premium subsidies?

If annually tilled cover crops are planted on an HEL field, the cover crop(s) need to be planted according to a conservation plan or system, as applicable. If cover crops are planted resulting in equal or increased soil erosion savings on HEL fields as recorded in the plan or system, the implementation will be deemed in compliance with the HEL conservation soil erosion requirements

10. If a person who has never participated in any USDA program subject to the conservation compliance provisions purchases land that already has an HEL determination, will NRCS need to complete a new determination and give the person appeal rights?

No. The existing determination stays with the land. If there is a conservation plan that is associated with the determination, the revised plan would need to be signed by the people who purchased the land.

FORM AD-1026

11. If a producer stopped participating in all USDA programs five years ago because they were going to convert a wetland, would this producer be considered to be subject to compliance for the first time?

No. In the situation described, the producer was previously subject to the conservation compliance provisions.

12. If form AD-1026, question 6, is answered with a “yes” response, will FSA or NRCS make a sodbuster determination?

The form AD-1026 in this instance would be referred by FSA to NRCS to make this determination. FSA will provide NRCS a map identifying the farm, tract, field and field boundary with the referral to NRCS for determination.

13. How should a producer who only grows oysters complete item 5 of the form AD-1026?

A person whose only interest is in producing oysters and has no interest in any land may check item 5A of the form AD-1026.

GENERAL CONSERVATION COMPLIANCE

14. What is the process for “locally determining” whether a crop is considered annual or perennial?

The NRCS Field Office should work with producers to determine if a crop is considered “annually tilled”. If “annual tillage” is used to grow the crop it would be considered an agricultural commodity for conservation compliance purposes. Alfalfa requires special consideration (see question 18).

15. Suppose a person was determined in violation of the HEL conservation provisions in 2013 and all administrative appeals were exhausted on June 10, 2014. Is the person eligible for federal crop insurance premium subsidies for reinsurance year 2015?

Yes. The person will be eligible for federal crop insurance premium subsidies for reinsurance year 2015, which began on July 1, 2014. However, if the person is still in violation prior to July 1, 2015, the person will be ineligible for federal crop insurance premium subsidies for the 2016 reinsurance year.

16. Will persons who only participate in crop insurance programs be subject to random spot checks by NRCS for conservation compliance?

Yes.

17. If an annual crop is planted with a “no-till” system, is the crop considered a non-agricultural commodity for conservation compliance purposes?

No-till planting is considered annual tillage. Therefore, crops planted annually through a no-till system are considered agricultural commodities for conservation compliance purposes.

18. When is alfalfa considered an agricultural commodity for conservation compliance purposes?

Alfalfa (and other legumes) would be considered an agricultural commodity crop when planted as part of a crop rotation that includes annually tilled crops.

19. Is a person ineligible for federal crop insurance premium subsidies in the reinsurance year a conservation compliance violation is determined to have occurred?

No. A violation of the conservation compliance provisions results in ineligibility for federal crop insurance premium subsidies 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.

WETLAND COMPLIANCE

20. If a person elects to pay 150 percent of the cost of restoring a converted wetland to be eligible for federal crop insurance premium subsidies, will that person be eligible in the future for Environmental Quality Incentives Program (EQIP) and other conservation program benefits?

No. An in lieu fee payment would only impact a producer’s eligibility for federal crop insurance premium subsidies. The converted wetland would need to be restored or mitigated in order for a producer to remain eligible for EQIP and other conservation programs.

21. If a person has a wetland compliance violation but is following their timeline for mitigation, are they eligible for EQIP?

Assuming this particular producer has received a good faith determination for the wetland violation from FSA, they would have one year from the date of the good faith determination to implement a mitigation plan in order to stay eligible for EQIP.

www.nrcs.usda.gov

www.fsa.usda.gov

www.rma.usda.gov