



Reviewing USDA's Revised Conservation Compliance Regulation

Jonathan Coppess

Department of Agricultural and Consumer Economics
University of Illinois

farmdoc daily (5):80

Recommended citation format: Coppess, J. "Reviewing USDA's Revised Conservation Compliance Regulation." *farmdoc daily* (5):80, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, May 1, 2015.

Permalink <http://farmdocdaily.illinois.edu/2015/05/reviewing-usda-revised-conservation.html>

On Friday, April 24, 2015, the Farm Service Agency (FSA) published its [regulation](#) for attaching conservation compliance to the portion of premium covered by the Federal Crop Insurance Corporation (FCIC), known as premium subsidy. Section 2611 of the 2014 Farm Bill ([Agricultural Act of 2014](#)) made Highly Erodible Land (HEL) and Wetlands conservation compliance provisions a requirement for farmer eligibility for premium subsidy (more on the farm bill provision [here](#)). Recently, FSA [reminded](#) farmers that they have until **June 1, 2015**, to file the certification form (AD-1026) required to remain eligible for crop insurance premium subsidy. This article reviews the regulation (a version of this article is also available on the companion website [Policy Matters](#)).

Background

Congress created compliance with HEL and wetlands provisions in the Food Security Act of 1985 (the 1985 Farm Bill) (more history can be found [here](#) and [here](#)). Pursuant to the 1985 Farm Bill, farmers had to comply with HEL and wetlands provisions to be eligible to receive farm commodity payments and to purchase crop insurance. The Federal Agricultural Improvement and Reform Act of 1996 (the 1996 Farm Bill) removed the compliance requirements for eligibility to purchase crop insurance. The 2014 Farm Bill re-attached compliance to crop insurance via eligibility for premium subsidy.

Conservation compliance precludes eligibility to receive certain USDA benefits (i.e., farm commodity and conservation program payments and crop insurance premium subsidy). For wetlands a farmer can be ineligible for either planting on former wetlands or for converting or draining a wetland so as to make the production of a crop possible. For HEL ground, a farmer becomes ineligible for planting on it without a conservation plan that maintains conservation practices intended to reduce soil loss. HEL is ground susceptible to soil loss at excessive rates determined in relation to soil loss tolerance values by the Natural Resources Conservation Service (NRCS). A wetland is any area: (1) with a predominance of wet soils; (2) that are inundated or saturated by water (ground or surface) sufficiently to support water tolerant vegetation; and (3) that supports such vegetation under normal circumstances.

FSA handles all compliance administrative functions. The technical determinations about HEL and wetlands are handled by NRCS. Crop insurance is administered by the Risk Management Agency (RMA) on behalf of the FCIC in a public-private partnership with the insurance industry. All three agencies and the FCIC are a part of USDA while crop insurance policies are sold by private companies and agents. In

We request all readers, electronic media and others follow our citation guidelines when re-posting articles from farmdoc daily. Guidelines are available [here](#). The farmdoc daily website falls under University of Illinois copyright and intellectual property rights. For a detailed statement, please see the University of Illinois Copyright Information and Policies [here](#).

general, farmers purchase crop insurance policies from a private crop insurance company approved to sell insurance by RMA (known as an Approved Insurance Provider (AIP)). Policies are purchased through and serviced by crop insurance agents for the AIP. Final determinations of any violation are made by NRCS and FSA. Neither RMA, FCIC nor AIP's (including employees, agents or contractors) will have any role in making eligibility determinations.

FCIC provides reinsurance on the policies and subsidizes the premium cost to farmers. Unlike other USDA benefit programs, the farmer does not directly receive funds for crop insurance; the premium subsidy works to reduce the out-of-pocket cost of insurance to the farmer. The farmer receives an indemnity payment based on the policy's coverage in the event an insurable loss occurs. This arrangement necessarily impacts how compliance functions with respect to crop insurance and is recognized in the Farm Bill and the regulation.

Discussion

Certification and Paperwork.

First, any person seeking eligibility for crop insurance premium subsidy must have on file with FSA a certification of compliance form (AD-1026). The deadline to have that on file is June 1st. Lack of certification is itself a basis for being ineligible for non-compliance for either HEL or wetlands. If a form is currently on file, a new one is needed only if there has been a change in the farming operation that renders the previous one incorrect or if there has been a HEL or wetland conversion violation on the farm. Failure to timely file the AD-1026 will result in ineligibility for premium subsidy for the subsequent reinsurance year. Additionally for wetlands compliance, failure to properly notify USDA (including revisions of existing forms) can result in a monetary penalty not to exceed the total amount of premium subsidy paid by FCIC for the farmer on all policies for all years that the person was determined to have been in violation of the notification requirements.

NRCS is required to evaluate all certifications in a timely manner, which takes into consideration whether unfavorable site conditions impacted timeliness of an evaluation. The farmer will remain eligible for crop insurance during the NRCS evaluation. If NRCS fails to timely evaluate the certification and the person is later found to have been in violation, the person will not be ineligible for premium subsidy. This limit, however, only applies to violations that occur while NRCS is evaluating the paperwork and not for those that happen subsequently. It also does not apply if the person is found to have participated in or made use of a scheme or device to avoid the regulatory provisions.

Violations Generally.

The reinsurance year is important to the operation of crop insurance, which involves contracts between the farmer and the AIP and a contract between the AIPs and FCIC. The reinsurance year begins July 1st of any given calendar year and ends June 30th the following year. Because of the contractual nature of crop insurance, the general rule is that nothing can change inside of the reinsurance year. If the farmer is ineligible on July 1 for violations or improper certification determined in the previous reinsurance year, then the farmer will remain ineligible for that reinsurance year and any remedies will apply to the next reinsurance year. Similarly, if the farmer is eligible for premium subsidies on July 1, she or he will remain eligible for that reinsurance year. The new provisions for premium subsidy go into effect beginning with the 2016 reinsurance year for all Federally-reinsured policies that have a sales closing date on or after July 1, 2015.

In order for there to be a violation that impacts eligibility for premium subsidy, USDA must make a final determination that there has been a violation, which means that the farmer or landowner has exhausted all appellate rights within USDA. Once a final determination has been made, the individual becomes ineligible for premium subsidy in the next reinsurance year and for all future reinsurance years until the violation has been remedied. USDA cannot require repayment of premium subsidy or indemnities from years prior to the final determination. Thus, for purposes of crop insurance premium subsidy, ineligibility cannot apply during any current reinsurance year or any past reinsurance years. It is only forward-looking.

Highly Erodible Land.

For HEL, any farmer who is subject to the HEL compliance requirements for the first time solely because the 2014 Farm Bill re-attached them to crop insurance premium subsidy is given 5 reinsurance years to develop and comply with a conservation plan on the ground. The 5-year clock begins in the reinsurance year (July 1st) after the reinsurance year in which NRCS made the final determination. This applies only to persons who have not previously been subject to the HEL provisions and will not apply to anyone who had any interest in any crop or land that was subject to HEL compliance before February 7, 2014 (date of enactment of the 2014 Farm Bill). Therefore, for example, if a farmer has been finally determined to be in violation of HEL compliance (including exhaustion of all appeals) in November 2017 (the 2018 reinsurance year), ineligibility for premium subsidy will begin July 1, 2018 and continue until the violation is remedied.

Those individuals who had been subject to HEL compliance before February 7, 2014, but stopped participating in USDA benefit programs are under a different timing requirement. If that person would have been violation had they continued to participate in USDA programs and are currently in violation of HEL compliance, they have two reinsurance years to develop and comply with an NRCS-approved conservation plan. This clock also begins July 1st the year after the person certifies compliance to FSA.

Wetlands.

Wetlands compliance involves different requirements as well. First, for crop insurance premium subsidy it only applies for wetlands that were converted after February 7, 2014 (date of enactment of the 2014 Farm Bill). The February 7, 2014 date applies both to conversions and to planting crops on converted wetlands: the wetland must have been converted after that date in order to cause ineligibility. Second, any person subject to a final determination of a wetlands violation has a single reinsurance year to initiate a mitigation plan to avoid being ineligible for premium subsidy. Third, a person subject to wetlands compliance for the first time solely because of the 2014 Farm Bill has two reinsurance years after the reinsurance year of final determination to implement all practices in a mitigation plan to remedy the violation.

Because crop insurance does not provide policies for all crops in all counties and expands coverage based on demand and data availability, there are special provisions for those lacking crop insurance policies. As stated above, the general rule is based on wetlands converted after February 7, 2014, however, if an insurance policy was not available at that time the conversion date becomes the date on which an insurance policy first becomes available. USDA will consider an insurance policy to have been available for the crop if it was available in any county in which the person had any interest in any acreage. This includes written agreements obtained for the crop in any county.

Other Exemptions and Exceptions for Wetlands.

Wetland conversions that impact less than 5 acres on an entire farm can be exempted. In lieu of being ineligible based on such minor violations, the person can make a contribution to USDA-approved wetlands mitigation (known as mitigation banking) that equals 150 percent of the cost of mitigation of the converted wetland. The regulation clarifies that a person is limited to only one such exemption per farm and the payment cannot be refunded even if the farmer ends up restoring the wetland in the future.

A second exemption applies if USDA determines that the conversion was done in good faith and without any intention to violate the compliance provisions. The person can regain eligibility if she or he mitigates or remedies the violation within an agreed-upon timeframe not to exceed two reinsurance years. Good faith determinations will look to whether the person should've known the wetland existed, whether NRCS had informed them about the wetland and if the person has a record of previous wetlands violations. Such treatment amounts to a waiver of ineligibility to allow for mitigation but it only lasts up to two reinsurance years.

Landlord and Tenant Issues.

Because crop insurance coverage (and premium subsidy) is based on persons, counties and insurable units it often encompasses multiple farms and creates complications. In general, a landlord's ineligibility for

USDA benefits based on the actions of a tenant is limited to the land under lease with the violating tenant, it will not be extended to other lands owned by the landlord. USDA has decided to reduce the amount of premium subsidy proportionately based on the land in farms that are not in compliance. This does not apply, however, if the landlord requires production on HEL ground or converted wetlands, nor if the landlord has acquiesced in the tenant's activities. Finally, this treatment does not apply if the landlord and tenant are insured under the same policy.

Similar treatment is provided for tenants. If one farm being rented is out of compliance, the tenant will have premium subsidy reduced proportionately for that farm's acres (out of all acres) instead of losing eligibility entirely. This treatment does not apply if the landlord and tenant are insured under the same policy; both will lose all premium subsidy for that policy. The tenant must show, however, that a good-faith effort was made to get the farm in compliance, that the landlord refused and that the tenant was not involved in a scheme or device to avoid the compliance requirements.

Conclusion

The 2014 Farm Bill re-attached conservation compliance provisions to crop insurance with violations resulting in ineligibility for premium subsidy. The contractual nature of crop insurance makes compliance more complicated; both the statute and the regulation seek to address those complications in part by applying ineligibility in a forward-looking manner. USDA's regulation provisions appear to track the 2014 Farm Bill requirements very closely. USDA has had to fill in a few discretionary details, including with regard to proportionate reductions in premium subsidy in certain landlord and tenant situations. The significance of this decision in practice remains open for further exploration. In general, a producer can run afoul of compliance and be ineligible for premium subsidy if she or he produces a crop on HEL or on a wetland that was converted after February 7, 2014. A person can also be ineligible for premium subsidy for converting a wetland after that date even if no crop is produced on it. The discussion in this article is a general one based on the provisions in the Farm Bill and the regulations. Given the many variables and intricacies across farms and fields, there remains the possibility that individual situations will vary. Producers are encouraged to work with FSA and NRCS officials in their area and are reminded that the deadline for filing paperwork certifying compliance is **June 1, 2015**.

References

113th Congress (2013-2014). *Public Law 113-79*, February 7, 2014. Accessed May 1, 2015.
<http://www.gpo.gov/fdsys/pkg/PLAW-113publ79/pdf/PLAW-113publ79.pdf>

Coppess, J. "A Brief History of Farm Conservation Policy." *Policy Matters*, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, July 24, 2014.

Coppess, J. "Conservation Compliance and Crop Insurance in the New Farm Bill." *farmdoc daily* (4):81, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, May 2, 2014.

FSA/USDA. "Rules and Regulations." *Federal Register*. Vol. 80, No. 79. Released April 24, 2015, accessed May 1, 2015.
http://www.fsa.usda.gov/Internet/FSA_Federal_Notices/conservationcompliance.pdf

FSA/USDA. "USDA Reminds Farmers to Certify Conservation Compliance by June 1 Deadline." Released April 16, 2015, accessed May 1, 2015.
http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=ner&newstype=newsrel&type=detail&item=nr_20150416_rel_0099.html

Stubbs, Megan. "Conservation Compliance and U.S. Farm Policy." Congressional Research Service. Released June 9, 2014, accessed May 1, 2015.
<http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R42459.pdf>