



Conservation Compliance and Crop Insurance in the New Farm Bill

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The Agriculture Act of 2014 (the 2014 Farm Bill) links crop insurance premium assistance and compliance with wetlands and highly erodible lands conservation provisions. As part of the series explaining provisions of the new farm bill (available [here](#)), this post discusses the new conservation compliance provisions and requirements. As with other posts, the discussion below describes those provisions in the farm bill, final operation of compliance for crop insurance will depend on how it is implemented by USDA and updates will be forthcoming as needed.

Background

Historically, linking conservation compliance to crop insurance was considered during creation of the crop insurance program in 1937 and 1938, however, it wasn't included as a requirement until the Food Security Act of 1985 (more history is available [here](#)). Under that bill's provisions, any person who produced an agricultural commodity on highly erodible land or wetlands became ineligible for Federal Crop Insurance. The Federal Agriculture Improvement and Reform (FAIR) Act of 1996 removed the crop insurance provision from the statute, which effectively exempted crop insurance from the highly erodible lands and wetlands conservation provisions and requirements.

During consideration of the farm bill on the Senate floor in 2012, Senator Saxby Chambliss (R-GA) offered an amendment to re-establish the link between conservation compliance and crop insurance. Senator Chambliss' amendment sought to condition eligibility for any portion of the premium paid by the Federal Crop Insurance Corporation on compliance with highly erodible lands and wetlands conservation in the same fashion as required for Title I commodity programs. The amendment narrowly passed the Senate by a vote of 52 in favor and 47 opposed (the vote is available [here](#) and debate on the amendment is available [here](#)). The 2013 version of the Senate farm bill contained a revised version of compliance for crop insurance and the conference committee modified it further before including it in the final version of the 2014 farm bill.

Discussion

Conservation compliance is concerned with annual crop production on highly erodible land. It also seeks to address both conversion of and production on wetlands. Highly erodible land and wetlands compliance

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have historically (since the 1985 Farm Bill) been two separate components of compliance, receiving somewhat different treatment due to the conservation issues each seeks to address. They often have parallel or similar operational aspects as well and the new farm bill builds upon that existing structure.

Under the 2014 Farm Bill, failure to comply with the conservation compliance provisions will result in the person becoming ineligible for any portion of the crop insurance policy's premium that is paid for by the Federal Crop Insurance Corporation (FCIC) – commonly referred to as premium subsidy or premium assistance, both terms are used interchangeably in this discussion. Importantly for crop insurance premium assistance, ineligibility only applies in a forward-looking manner such that a person can only be ineligible in reinsurance years after the date that USDA has reached a final determination on the violation. Final determination in this setting means the person can first exhaust all administrative appeal rights before becoming ineligible and if that falls during the reinsurance year, the person becomes ineligible the following year. Ineligibility cannot, however, apply to existing or prior reinsurance years. These explicit provisions in the statute mean that ineligibility for crop insurance premium assistance only impacts future years; there is no authority to impact current or previous crop insurance policies or contracts. According to the Standard Reinsurance Agreement (SRA) between the insurance companies and the FCIC the reinsurance year begins on July 1 and ends on June 30th of the following year (the SRA is available [here](#)). Again, these provisions are common for both highly erodible lands and wetlands compliance.

(1) Highly Erodible Land Conservation Compliance

A violation of the Highly Erodible Land provisions occurs when a person produces an agricultural commodity on any field that is considered predominantly highly erodible or if the land has been designated for non-cultivation under a USDA program. (16 U.S.C. §3811(a)). For purposes of compliance (including wetlands), the statute defines agricultural commodity as any crop that is planted and produced by "annual tilling of the soil," while including sugarcane. (16 U.S.C. §3801(a)(1)).

By applying a conservation plan for the land that has been approved by NRCS, the person can remain eligible for crop insurance premium subsidy while producing a crop on highly erodible land (or at least portions of it). Additionally, any person subject to compliance for the first time solely because the 2014 Farm Bill relinked compliance and crop insurance is given five reinsurance years to develop and comply with a conservation plan before becoming ineligible for premium assistance. If a person would have been in violation if they had participated in programs requiring compliance after the 2014 Farm Bill was enacted (February 7, 2014) and the person remains in violation, the person has two reinsurance years to develop and comply with an approved conservation plan.

(2) Wetlands Conservation Compliance

For wetlands conservation compliance, there are two types of violations: (1) production of an agricultural commodity in any crop year on converted wetland; and (2) beginning after November 28, 1990, any conversion of a wetland (includes draining, dredging, filling, etc. if it serves to make production possible). (16 U.S.C. §3821(a) and (d)). Either of these constitute a violation of the statute and may impact eligibility for premium assistance in future reinsurance years.

The date of conversion is important for ineligibility under the wetlands provisions. If the wetland was converted after the 2014 Farm Bill goes into effect (February 7, 2014), then ineligibility for crop insurance premium assistance applies as stated to subsequent reinsurance years. If, however, the conversion impacts less than five acres on the farm, the person may pay a contribution equal to 150 percent of the cost of mitigation for the converted wetland. This contribution goes into a dedicated fund at USDA for wetland restoration purposes.

If the wetland was converted before the 2014 Farm Bill went into effect (February 7, 2014), then ineligibility for crop insurance premium assistance will not apply based on that conversion. In other words, prior conversions of wetlands appear to be grandfathered for purposes of being eligible for crop insurance premium assistance with the new date trumping the provision regarding conversions after November 28, 1990. Further information from USDA in the regulations can be expected to clarify the matter. It is not written to impact eligibility for Title I commodity programs, however, which presumably still apply the 1990 date for violations based on a conversion.

Agricultural commodities that do not currently have a policy or plan of insurance under crop insurance are provided different treatment. For those commodities, ineligibility only applies to conversions that take place after the date the policy or plan of insurance becomes available. The person has two years to take the necessary actions to mitigate the conversion.

In general, if a person has violated the wetlands provisions they have one reinsurance year to initiate a mitigation plan to address the violation. Failure to address the conversion results in the person being ineligible for premium assistance in future reinsurance years. If the person is subject to wetlands compliance for the first time solely because the 2014 Farm Bill relinked crop insurance and compliance, they have two reinsurance years to take necessary actions to remedy or mitigate the violation. If USDA determines that the person violated the wetlands provisions in good faith (i.e., did so without intent to violate), the person also has two reinsurance years to take necessary actions to remedy or mitigate the violation.

The farm bill explicitly addresses situations for tenants where the landlord has converted the wetland and refuses to remedy or mitigate the conversion. If the tenant has made a good faith effort to comply and the landlord refuses to comply, so long as it is not part of a scheme or device to avoid compliance, then the tenant will not lose eligibility across his or her entire farm for crop insurance premium subsidy. Instead, only the specific farm of that landlord will be ineligible for premium subsidy and that will apply to any future tenant as well. In other words, if the tenant is not to blame for the conversion and the landlord refuses to comply, then the landlord's farm is subject to ineligibility but the tenant can keep eligibility for the rest of the farms and acres. The landlord cannot escape this by renting to a new tenant. This provision protects tenants from actions by landlords over which they have no control.

The final matter is certification that a person is in compliance. The 2014 Farm Bill requires those seeking crop insurance premium subsidy to certify to USDA that they are in compliance. Based on the bill language and the explanatory statement in the conference report, Congress did not intend for new certification forms or processes but that USDA use what is already in place for compliance (i.e., form AD-1026). USDA must review and evaluate the certificate in a timely manner and the person properly providing it cannot lose crop insurance coverage or premium assistance while evaluation is being undertaken. If USDA fails to timely evaluate a certification, the person cannot become ineligible based on the violation for which they provided certification. There is no indication in the statute as to what is considered timely. If the person fails to properly certify to USDA, however, and is later found to have violated the wetlands compliance provisions, that person will be required to make an equitable contribution to the dedicated fund at USDA for wetlands restoration. The amount of the contribution is at USDA's discretion but it cannot exceed the total amount the person is considered to have received in premium subsidies for the years they were in violation of the certification requirement.

Conclusion

The 2014 Farm Bill links crop insurance premium assistance and conservation compliance for highly erodible lands and wetlands. This updated version of compliance has been modified to address specific issues unique to crop insurance, such as contracting realities with third-party providers and reinsurers. Compliance only applies to the crop insurance premium subsidy or assistance. Ineligibility can only apply to future reinsurance years, it cannot require repayment of previous premium assistance or indemnities. Producers who are currently in compliance for purposes of commodity or conservation programs in the farm bill should not have any issues with this linkage. Producers farming on highly erodible land need to work with NRCS on a conservation plan. For wetlands, compliance issues are most likely for conversions after February 7, 2014, and existing or previously-determined violations that have not been resolved.

References

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