

PROVIDING AN EFFECTIVE FARM AND NATURAL RESOURCE SAFETY NET

What is Conservation Compliance?

Conservation compliance requires producers who participate in most Federal agricultural programs to implement soil conservation plans on highly erodible cropland and refrain from draining wetlands for agricultural production, or risk losing most farm financial assistance.

To maintain eligibility for most agricultural programs, farmers must:

- Actively apply a Natural Resources Conservation Service (NRCS) approved soil conservation plan on “highly erodible” land (HEL) used for crop production (or Conservation Compliance);
- Refrain from cultivating HEL that was not already cropland in 1985 without applying an approved conservation plan (the Sodbuster provision), and
- Refrain from draining wetlands for crop production (the Swampbuster provision).

Farmers who violate these requirements could lose some or all of their commodity, conservation, and disaster payments, access to USDA farm loan and loan guarantee programs, and other agriculture related benefits.

Most agricultural programs are subject to compliance requirements, including Direct Payments, Countercyclical Payments, Loan Deficiency Payments, Marketing Loan Gains, Certificate Gains, Noninsured Disaster Program, Ad hoc disaster assistance programs, ACRE, Supplemental Revenue Assurance (SURE), FSA farm operating loans, Farm Storage Facility Loan Program, wool and mohair programs, dairy marketing assistance program, Conservation Reserve Program, Environmental Quality Incentives Program, Agricultural Water Enhancement Program, Conservation Stewardship Program, Wetland Reserve Program, Wildlife Habitat Incentive Program, Farm and Ranch Land Protection Program, Grassland Reserve Program, and the Watershed Protection Program. Notably missing from this list is eligibility for the crop insurance program assistance.

The Compliance provisions were enacted in the 1985 Farm Bill. Some believe that the elimination of Direct Payments in the upcoming Farm Bill debate will mean producers will forego the remaining financial payments in order to no longer be subject to these erosion control and wetland protection requirements. This contention is a matter of some debate. For example, farmers will receive conservation and NAP disaster payments, and they risk losing eligibility for those as well. In addition, new commodity programs, like ARC or RLC, which may be created as part of new farm legislation, could also be sufficiently attractive to farmers to keep them in the programs and subject to Compliance. Nevertheless, some believe the best way to ensure farmers are still complying is to apply compliance requirements on federally subsidized crop insurance.

Crop insurance participation was actually linked with conservation compliance in the 1985 Farm Bill, but delinked in the 1996 Farm Bill because Congress effectively mandated farmers must obtain some level of crop insurance to be eligible for other disaster benefits.

What is being proposed in S. 10?

S. 10 extends the sodbuster and swampbuster provisions in current law to make them applicable to those who utilize crop insurance as a risk management tool; limits crop insurance subsidies on newly converted land for four years following the event; and reduces premium assistance by 15 percent for producers who have an Adjusted Gross Income of more than \$750,000.

What is being discussed?

Agricultural and environmental/conservation groups have been meeting in an attempt to find agreements on the mechanisms for linking crop insurance assistance to conservation compliance and discussing the pros and cons of limiting assistance for those who purchase crop insurance. The entire set of recommendations discussed in this document assumes no changes in the current Compliance provisions for other USDA program benefits. We do not support changes to current Compliance requirements. These recommendations would be applicable only to the linkage of Compliance and crop insurance premium assistance or availability. In turn, none of the recommendations make changes in any means testing or payment limit provisions currently in place.

Under these recommendations, crop insurance would continue to be available to all, but premium assistance would be eliminated when certain circumstances occur. The language in S. 10 should be amended as follows.

Ineligibility and Appeals

Upon finding a violation, S. 10 makes a producer immediately ineligible for crop insurance premium assistance. This would require the government to go back to Approved Insurance Providers (AIPs) and ask them to remit the premium subsidy and in turn the companies would be required to either notify producers that indemnities will be reduced or seek repayment of those subsidies.

Recommendation: Producers who break up or violate a conservation plan on highly erodible land or drain or improve the drainage of a wetland should not become ineligible for premium assistance in the year of the infraction. Crop insurance companies and producers have already incurred expenses and made major borrowing commitments at that time. It would be difficult and administratively burdensome to change the insurance policy mid-stream. Instead, no premium assistance should be available to the producer the following crop insurance year or until the infraction has been corrected or appropriately mitigated. Furthermore, it is critical that premium assistance not be denied until all appeals to USDA's National Appeals Division have been exhausted.

Transition for Implementation

S. 10 states that those who are subject to the loss of premium subsidies for the first time and have broken out highly erodible land will have five years to develop and comply with an approved

conservation plan before they risk losing eligibility for premium assistance. S. 10 requires those who drain wetlands to immediately lose eligibility for premium assistance.

Recommendation: Those who are subject to HEL (not Sodsaver) for the first time after May 1, 2013 will have five years to develop and comply with an approved conservation plan before they risk losing eligibility for premium assistance.

Those who are subject to Compliance for the first time and have drained wetlands after May 1, 2013 will be given a two year period to begin the mitigation process in order to retain eligibility to receive crop insurance premium subsidies.

Individuals who were subject to Compliance since enactment of the 2008 Farm Bill, but are no longer under Compliance (i.e you did not participate in the Direct Payment program in order to improve drainage on wetlands, you received disaster assistance in the 1990s but have not received it since, etc) will be given a two year period to develop and comply with a Compliance plan for HEL or two years to begin the mitigation process in order to retain eligibility to receive crop insurance premium subsidies.

Failure to File a Form 1026

Producers must currently file a Form 1026 indicating that they qualify for USDA program benefits.

Recommendation:

If a producer wishes to receive crop insurance premium assistance, he would be required to file a new Form 1026 and note any change to the operation or activities that would affect compliance. If USDA fails to evaluate the Form 1026 change in a timely fashion and the producer is later found to be in violation of the law, the producer would be held harmless. If, however, the producer fails to file a new Form 1026 and is found in violation, USDA would determine an equitable fine for the producer not to exceed the Federal government premium assistance during the years of violation.

Violations, Appeals and Corrective Actions

S. 10 would allow producers to be held liable for conversions of wetlands or the breaking up of HEL for crop insurance purposes. Under current law, producers are notified of a potential violation and given an opportunity to appeal the determination. If non-compliance was due to good faith without intent to violate, the producer has a one-year period to come back into compliance. During this time, the producer would not lose any USDA program benefits. S. 10 would extend these provisions to crop insurance premium assistance.

Recommendation:

The swampbuster or sodbuster provision for crop insurance must not have clawback provisions. If someone converts wetlands or breaks up HEL after May 1, 2013, the newly converted lands must be mitigated in accordance with current law.

S. 10 should contain the same linkage requirements for good faith non-compliance as is currently in place for FSA and NRCS programs. We do support, however, only allowing a producer one

year to initiate a satisfactory conservation plan to correct the problem. If he does not come into compliance during the period and does not meet any of the conditions for a waiver or other exemptions, FSA would then determine that the producer is ineligible for crop insurance premium subsidies for the following crop year and going forward until the violation has been corrected.

Penalties:

S. 10 provides for penalties to fit the scope of the infraction for HEL (not Sodsaver), but loss of all benefits for wetlands violations.

Recommendation:

Those who drain wetlands after date of enactment and wish to regain eligibility for crop insurance assistance can follow existing NRCS procedures to mitigate their impacts or, for impacts of less than 5 acres per farm, pay a fine equal to 150 percent of the cost of mitigation as determined by NRCS which will be put into a wetlands restoration program within an NRCS program. Failure to comply with either of these mechanisms will result in a loss of eligibility for crop insurance premium assistance until the violation has been mitigated.

Enforcement:

S. 10 mandates that the linkage with crop insurance be administered in the same way it currently works for linkage with FSA and NRCS programs. NRCS determines whether producers are in compliance through a system of status reviews on a five percent random sample of tracts. If NRCS, through their technical determination, finds the producer is not applying a conservation plan, then FSA is notified and a flag is put on that record in their automation system, signifying that the farm had HEL or a wetland and is in potential violation of compliance requirements. FSA is the enforcer of such a potential violation.

Recommendation:

If the program is linked to crop insurance premium subsidies, the Risk Management Agency would also receive a flag on the record in their automation system signifying a potential problem with the insured. The enforcement should be carried out in the same way as it is currently for FSA and NRCS programs.

Rules, Self-Certification and Enforcement

S. 10 requires that self-certification and enforcement be done by the same agencies exactly as they are now. Today, farmers sign a Form 1026 to self-certify that they are in compliance with conservation requirements and eligible to receive USDA benefits.

Recommendation:

If crop insurance was linked to conservation, the form could be changed to also include a self-certification line that they were eligible for premium subsidies.

Currently if a farmer is disbarred, suspended, has debt issues, or an order from the Department of Justice, their name and social security number are entered in a system at FSA called the Ineligible Tracking System (ITS). The Risk Management Agency pulls information from this system into its system and if a company attempts to insure that individual, they are notified (on at

least a weekly basis) that the person is ineligible for FSA or NRCS affected programs. This would be expanded under the new proposal to also notify Approved Insurance Providers that the individual was ineligible for premium assistance.

NRCS would provide technical determinations and perform random spot checks for compliance. FSA will check enforcement claims. Neither crop insurance companies or agents will become enforcers or held liable for any related issues. These provisions should have a minimal implementation burden on crop insurance and no financial liability to the crop insurance companies or agents.

Technical and Financial Assistance

Producers who have not come under Compliance in the past will need assistance to comply.

Recommendation:

Producers newly covered by conservation compliance requirements shall receive first priority for NRCS conservation technical assistance in developing and applying a conservation plan.

Priority will be provided to producers of newly covered conservation compliance requirements for applying conservation systems and implementing the plan using the resources of farm bill conservation programs.

The Secretary shall be directed to provide additional technical and program financial resources to states with large numbers of producers who were not previously subject to compliance. Further, additional resources will be allocated to USDA's state offices to respond to producer requests for 1026.

Limiting Crop Insurance Eligibility

S. 10 provides for a reduction of 15 percent on premium assistance if a producers Adjusted Gross Income exceeds \$750,000.

Recommendation:

We oppose any provisions that provide for means testing or payment limitations on crop insurance premium assistance or indemnities. We also oppose any reduction in premium subsidies.

If these kinds of changes are made to the crop insurance program, there is an incentive for removing acres from the insurance pool. This leads to less affordable coverage and less timely private-sector service. The insurance pool must be of sufficient size and comprised of a broad cross section of risks. In order for farmers with greater risk to have access to affordable insurance, farmers from all risk profiles need to participate in the pool. Established farmers on proven land make it possible for smaller growers and farmers in riskier areas to get proper risk protection from the private sector.

Less participation in the crop insurance program increases the demands on Congress to pass ad hoc disaster assistance. The fact that there were no calls for Congressional help after last year's one in 50 year droughts is a testament to how well the system is working. Making changes to the

program to discourage participation will not provide for an effective farm and natural resource safety net.

NOTE: The environmental/conservation groups and the agricultural/crop insurance company groups have agreed to the above principles as a way to move forward with the Farm Bill debate. This was a delicately crafted compromise and we will not support any changes to the points. is supported by these agricultural/crop insurance company and environmental/conservation groups. Agricultural/crop insurance groups are committed to oppose changes to current conservation compliance laws and to this compromise. Environmental/conservation groups are committed to oppose changes to premium assistance or eligibility for the crop insurance program.