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## Should Tying Conservation Compliance to Crop Insurance be Altered?

### BACKGROUND

Highly erodible land (HEL) conservation and wetland conservation are referred to jointly as conservation compliance. The 2014 Farm Bill requires that in exchange for a farmer to be eligible to receive crop insurance premium discounts, he/she must maintain a minimum level of conservation on highly erodible land and not convert wetlands into crop production.

The highly erodible land conservation provision (sodbuster) applies to land classified as highly erodible that was not in cultivation between 1980 and 1985 and to any highly erodible land in production after 1990, regardless of when the land was put into production. Land meeting this classification can be considered eligible for premium discounts if the producer agrees to cultivate the land using a USDA—NRCS approved conservation plan. In addition to the application of an approved conservation plan, a number of exemptions are possible before a farmer becomes ineligible for premium discounts.

The wetland conservation provision (swampbuster) extends the sodbuster concept to wetland areas. Producers who plant a program crop on a wetland converted after December 23, 1985, or who convert wetlands, making agricultural commodity production possible after November 28, 1990, are ineligible to receive premium discounts. This means that for a producer to be found out of compliance, crop production does not actually have to occur. Activities such as draining, dredging, filling, or leveling the wetland may cause a producer to be out of compliance even if the producer does not plant or harvest the acres.

It is important to note that compliance violations that cause loss of federal crop insurance premium discounts are different than those that affect eligibility for farm programs. In addition, conservation compliance is only linked to the crop insurance premium discount, not the eligibility to purchase crop insurance. This paper discusses only the provisions relating to crop insurance.

### ISSUE

Any compliance violation due to linkage with insurance would have the penalty imposed in the following year rather than the current year.

There is no denial of premium assistance until all USDA appeals are exhausted.

There are no “clawback” provisions to allow violations that occurred between 2008 and 2013 to be captured and penalized. The provisions are only forward looking and will never apply to past crop insurance years.

If a producer is out of compliance, he/she may not receive premium discounts until he/she is back in compliance.

For those who have never participated in farm programs, there is a five-year grace period to develop and apply a conservation plan for highly erodible land.

There is no grace period for draining wetlands; however, those newly covered who have drained wetlands after May 1, 2013, have a two-year period to begin the mitigation process to retain eligibility for premium assistance.

If a wetland is drained after May 1, 2013, mitigation is required under current NRCS procedures.

If the wetland that was converted is less than five acres of the person's entire farm, the farmer can pay an amount equal to 150 percent of the cost of mitigation, complete mitigation, and not lose premium discounts. If the farmer fails to comply, he loses the ability to receive crop insurance premium discounts.

Current protections and enforcement procedures, including appeals, good faith, status reviews, and data sharing between agencies will be applicable to any newly covered persons and land. However, the Risk Management Agency would also participate in data sharing to flag a potential problem with the insured.

Producers self-certify their eligibility for premium discounts on FSA form AD 1026.

Producers newly covered by compliance receive priority for NRCS conservation technical assistance in developing and applying a conservation plan. They also receive priority for financial assistance using the resource of Farm Bill conservation programs.

A tenant farming on land with HEL or wetlands found in violation would have ineligibility limited only to the farm that is the basis for the ineligibility provided good faith efforts to meet conservation requirements are made, the landlord has refused to meet requirements, and no evidence of fraud to avoid compliance is evident.

A farmer who converts a wetland but acts in good faith (without intent to violate) has one reinsurance year to begin mitigation. A farmer who knowingly converts a wetland is ineligible for premium discounts beginning the next crop insurance year unless corrective action is initiated.

If a crop insurance policy becomes available for the first time in your area (ex: oranges in Champaign, Illinois) and the farmer has never participated in any commodity or conservation program, he/she has five crop insurance years to comply for HEL and two crop reinsurance years to comply with wetland compliance if he/she manipulated or converted a wetland after May 2013.

If USDA does not complete wetlands determinations in a timely manner, the farmer is held harmless during that time. The farmer is not at fault for USDA process (or lack thereof) and a farmer will be able to continue his or her business without fear of a determination affecting the current insurance year.

## **OPTION #1**

Continue conservation compliance as outlined in law above.

## **OPTION #2**

Repeal the tie between conservation compliance and crop insurance.