



## National Sustainable Agriculture Coalition

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**RE: Comments on the Conservation Compliance Interim Rule; RIN 0560-AI26; Vol. 80, No. 79, pp. 22873; April 24, 2015; Submitted online via [regulations.gov](http://regulations.gov).**

The National Sustainable Agriculture Coalition (NSAC) welcomes the opportunity to provide comments on the interim rule for conservation compliance. NSAC's represented members<sup>1</sup> include family farm, rural, and conservation organizations across the country that share a commitment to federal policy that promotes sustainable agriculture production systems, family-based farms and ranches, and healthy, vibrant rural communities.

We engaged extensively in the reattachment of conservation compliance and crop insurance subsidies during the multi-year process that became the 2014 Farm Bill; and following the passage of the bill, we delivered pre-rulemaking recommendations to NRCS, FSA, and RMA on a number of our priorities. Our comments below build upon those earlier recommendations, which we delivered in August 2014.

### **1. Applicability of Modifications Made in 2014 Farm Bill**

**Recommendation:** The exemptions, relief, and “payment-in-lieu-of-ineligibility” options included in Section 2611 (“Highly erodible land and wetland conservation for crop insurance”) of the 2014 Farm Bill should not apply in cases where acreage is enrolled in both the federal crop insurance program *and* another program covered by conservation compliance.

Section 12.13(a) of the interim rule explicitly states that any exemptions or relief established in the new crop insurance section of conservation compliance only apply to crop insurance subsidies and do not apply to other benefits even for the same person for the same crop year or reinsurance year.

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<sup>1</sup> Agriculture and Land Based Training Association, Alternative Energy Resources Organization, California Certified Organic Farmers, California FarmLink, C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture), Catholic Rural Life, Center for Rural Affairs, Clagett Farm/Chesapeake Bay Foundation, Community Alliance with Family Farmers, Dakota Rural Action, Delta Land and Community, Ecological Farming Association, Farmer-Veteran Coalition, Fay-Penn Economic Development Council, Flats Mentor Farm, Florida Organic Growers, Grassworks, Hmong National Development, Illinois Stewardship Alliance, Institute for Agriculture and Trade Policy, Interfaith Sustainable Food Collaborative, Iowa Natural Heritage Foundation, Izaak Walton League of America, Kansas Rural Center, Kerr Center for Sustainable Agriculture, Land Stewardship Project, Michael Fields Agricultural Institute, Michigan Integrated Farm and Food Systems, Michigan Organic Food and Farm Alliance, Midwest Organic and Sustainable Education Service, National Center for Appropriate Technology, Nebraska Sustainable Agriculture Society, Northeast Organic Dairy Producers Alliance, Northern Plains Sustainable Agriculture Society, Northwest Center for Alternatives to Pesticides, Ohio Ecological Food and Farm Association, Oregon Tilth, Organic Farming Research Foundation, Rural Advancement Foundation International – USA, Union of Concerned Scientists Food and Environment Program, Virginia Association for Biological Farming, Wild Farm Alliance.

We commend USDA for including this language, and we recommend that it be retained in the final rule.

The new requirements for crop insurance subsidies do not change existing conservation compliance requirements for other programs, including Title I commodity programs. Rather, the new provisions apply narrowly to producers who receive federally subsidized crop insurance but do not receive benefits through any of the other farm programs to which 1985 (as amended) conservation compliance requirements apply (“covered programs”).

## 2. Payment in Lieu of Ineligibility

**Recommendation:** Section 12.13(f) of the final rule should clarify that only a *single* conversion of five acres or less is allowed on an entire farm under this exemption, regardless of the number of farm managers or operators and regardless of any changes in ownership.

**Recommendation:** The term “entire farm” should include all land that the producer operates, whether owned or rented, as outlined in current FSA policy.

**Recommendation:** The five-acre cap should be linked to the land, not to the farmer, so that if the in-lieu-of-ineligibility allowance has been used on a farm, it cannot be used again if the farm changes ownership.

Section 12.13(f) of the interim rule states: “a person is limited to only one exemption, as determined by NRCS, described in paragraph (f)(1) of this section per farm.” We are greatly concerned that, by tying the exemption to the person rather than the farm, the door is open for multiple farm owners, operators, or managers to each convert small wetlands on a single farm. The final rule should clarify that only a single conversion of five acres or less is allowed on an entire farm under this exemption, regardless of the number of farm managers or operators and regardless of any changes in ownership.

## 3. Equitable Contribution

**Recommendation:** The final rule should define “equitable contribution” as the *full amount* of the crop insurance premium paid by the FCIC for all years the person was in violation.

Section 12.13(l) of the interim rule states: if a producer fails to provide a certification of compliance for review by USDA and the producer is subsequently found to be violating conservation compliance rules, the producer must pay an “equitable contribution,” which “will not exceed the total amount of Federal crop insurance premium subsidy paid by FCIC on behalf of the person for all policies and plans of insurance for all years in which the person is determined to have been in violation.”

If a producer is in violation of conservation compliance, they are generally ineligible for crop insurance premium subsidies. It would hold, then, that a producer who has been receiving subsidies and is subsequently found to be violating conservation compliance should pay back the entirety of the subsidies he received while in violation. A producer who knows that he will receive most of his premium subsidy despite violating conservation compliance may be more likely to skirt compliance.

**Recommendation:** The final rule should clarify that producers who violate swampbuster must mitigate wetland conversions even in cases where they are exempted from ineligibility.

We recommend that subsection 12.13(l)(1) be modified as follows (proposed text underlined):

“A person who fails to notify FSA of any change that could alter their status as compliant with the provisions of this part and is subsequently determined, by FSA or NRCS, to have committed a violation of the wetland conservation provisions of this part after February 7, 2014, will be required to:

- (i) pay to NRCS an equitable contribution; and
- (ii) mitigate all values, acreage, and functions of any converted wetlands.”

Section 12.13(l) of the interim rule allows violators under certain circumstances to make a payment in lieu of losing crop insurance premium subsidies. The final 2014 Farm Bill Conference Report clearly states that producers under these circumstances must still mitigate the impacts of compliance violations: “Payment of the equitable contribution does not remove or limit their responsibility to comply with the soil erosion requirements or wetland conservation, restoration or mitigation requirements within the prescribed timeframes to retain the benefits of premium assistance in subsequent years.” This should be clarified in the final rule.

#### 4. Timely Manner

**Recommendation:** The final rule should define “timely manner” as at least two field seasons.

Section 12.13(k) states: “A person will not be ineligible for Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) if: (i) NRCS fails to complete a required evaluation of the person’s Form AD–1026, or successor form in a timely manner after all documentation has been provided to NRCS...”

However, the rule does not define “timely manner.” We are greatly concerned that, if certification review requests pile up, this provision will create a loophole for bad actors to easily secure permanent exemptions from compliance requirements. The absence of a definition also invites litigation.

We believe that two field seasons will provide sufficient time for NRCS to conduct on-site or off-site reviews and verifications of compliance. If the agency disagrees, we urge you to add a more realistic definition in the final rule, but in no case should it be less than two field seasons.

**Recommendation:** In cases where USDA does not review a certification of compliance in a timely manner, the rule should be clear that the underlying mitigation requirements nonetheless apply.

The “timely manner” exemption creates a potential avenue for bad actors to receive crop insurance premium subsidies even if a compliance violation has occurred. However, neither the 2014 Farm Bill nor the interim rule exempts those producers from mitigating the impacts of such violations. The final rule should clarify that producers who violate swampbuster must mitigate wetland conversions even in cases where they are exempted from ineligibility.

## 5. Mitigation ratio

**Recommendation:** USDA should follow the clear and unambiguous language of the statute and implement mitigation in such a way that retains or improves wetland functions and values.

The preamble to the interim rule notes: “As specified in the current regulations, persons may maintain their payment eligibility for most USDA benefits if the wetland values, acreage, and functions of any wetland conversion activity are adequately mitigated, as determined by NRCS, through the restoration of a converted wetland, the enhancement of an existing wetland, or the creation of a new wetland.”

The 2014 Farm Bill once again dictates that, in addition to mitigating acreage lost, producers who convert wetlands must also mitigate wetland values and functions, and that in some cases more than a 1-to-1 acreage conversion may be needed to provide equivalent functions and values. This is explicit in statute and therefore supersedes report language that encourages USDA to administer mitigation “at a ratio not to exceed a ratio of 1-to-1 acreage.”

We strongly support the existing statutory and regulatory language that requires any loss of wetland values and functions to be fully mitigated.

We appreciate your consideration of our comments, and we look forward to continued engagement as you finalize the conservation compliance rule.

Sincerely,



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