



Highly Erodible Land and Wetland Conservation Compliance for Crop Insurance Premium  
Subsidies:  
Recommendations for 2014 Farm Bill implementation

The National Sustainable Agriculture Coalition (NSAC) engaged extensively in the effort to reattach conservation compliance requirements to crop insurance subsidies during the multi-year process that became the 2014 Farm Bill. We strongly support existing conservation compliance requirements that are applied to commodity, credit, and conservation programs under the 1985 Farm Bill, though believe they need revision to fulfill their purpose. Despite weaknesses, we would have preferred that the same requirements be extended to crop insurance subsidies in the 2014 Farm Bill.

Instead, the new Farm Bill includes a number of provisions that could potentially make compliance requirements for crop insurance less effective at deterring wetland conversions than compliance requirements for commodity programs. The Farm Bill leaves USDA with a significant degree of discretionary decision-making authority over these new provisions.

We look forward to the opportunity to provide comments on these and other components of the new compliance language during the upcoming rulemaking. However, in advance of the rulemaking, we provide the following recommendations for your consideration on behalf of our 40 represented member organizations.

1) Applicability

The 2014 Farm Bill relinked conservation compliance requirements to federal crop insurance premium subsidies. The new requirements for crop insurance subsidies do not change existing conservation compliance requirements for other programs, such as 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 conservation compliance requirements apply (“covered programs”). Importantly, this means that producers receiving payments for acres enrolled in other commodity programs are still held to the existing conservation compliance requirements for those acres.

**We recommend that, in cases where acreage is enrolled in both the federal crop insurance program and another covered program, USDA should apply existing conservation compliance requirements under the 1985 Food Security Act rather than the new conservation compliance requirements under Section 2611 (“Highly erodible land and wetland conservation for crop insurance”) of the 2014 Farm Bill.**

2) Wetland Mitigation Banking

The primary goal of Swampbuster is to deter wetland conversions. Wetland mitigation can help limit the negative environmental impacts of conversion, but should only be used in cases where conversion is unavoidable. For the first time in farm bill history, the 2014 Farm Bill provides funding for wetlands mitigation banking. However, the Bill does not dictate how the money should be used. It is important to ensure that the new funding does not unintentionally make it easier or cheaper for producers to convert wetlands. Moreover, for wetland conversions that are mitigated through the banking program, USDA must ensure high mitigation standards that consider wetland functions and values in addition to design factors such as shape and size.

**First, we recommend that the \$10 million in mandatory funding be used to help entities start mitigation banks, but not be used to subsidize the purchase of credits by farmers wishing to mitigate wetland conversions.**

**Second, we recommend that any mitigated wetland should generate ecological values and functions that are equal to or greater than those of the corresponding converted wetland.**

**Third, NRCS should ensure that all “mitigation banking instruments” clearly identify the parties responsible for the long-term management and monitoring of mitigation sites, and the source of funding to be used for long-term management and monitoring. The banking instrument should require periodic monitoring reports over the life of the mitigation site.**

3) Timely manner

The 2014 Farm Bill states: “if the Secretary fails to evaluate the certification [of compliance] in a timely manner and the person is subsequently found to be in violation of this subsection, ineligibility shall not apply to the person for that violation.” The Bill does not define “timely manner.” We are greatly concerned that, if certification review requests pile up, this provision could unintentionally create a loophole for bad actors to easily secure permanent only exemptions from compliance requirements.

**First, the timely evaluation provision applies only to acres that are enrolled in federal crop insurance but not enrolled in other covered programs (see Recommendation 1).**

**Second, we recommend that USDA define “timely manner” to be at least two field seasons. This will hopefully provide sufficient time for NRCS to conduct on-site or off-site reviews and verifications of compliance.**

**Third, 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 should nonetheless apply and the producer is still required to mitigate the wetland conversion to retain premium assistance eligibility.**

4) Payment in lieu of ineligibility

The 2014 Farm Bill states that Swampbuster requirements do not apply to crop insurance subsidies if the conversion of wetlands “impacts less than 5 acres of an entire farm and the person pays a contribution equal to 150% of the cost of mitigation.” The Bill dictates that such payments should be deposited into a contribution account, as described in section 1241(f) of the Food Security Act of 1985, for the purpose of wetland restoration.

**First, the option to pay a fee in lieu of ineligibly applies narrowly to acres that are enrolled in the federal crop insurance program but not in other covered programs, such as commodity programs (see Recommendation 1).**

**Second, we recommend that USDA apply this “in-lieu of ineligibility” fee option in cases where the *cumulative total* of all wetland conversions on a farm impacts less than five acres of an entire farm. In other words, ten four-acre wetlands on a farm should be counted as 40 acres, rather than each of the four-acre conversions on that farm qualifying for the in-lieu fee option.**

**Third, we recommend that “entire farm” be inclusive, covering all land that the producer owns, operates, or rents, as outlined in current FSA policy.**

**Fourth, 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.**

5) Equitable contribution

The 2014 Farm Bill dictates that, 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” for the violation. The equitable contribution “shall not exceed the total of the portion of the premium paid by the Federal Crop Insurance Corporation for a policy or plan of insurance for all years the person is determined to have been in violation subsequent to the date on which” the person provides certification of compliance.

**First, the timely evaluation provision only applies to acres that are enrolled in federal crop insurance but not in other covered programs (see Recommendation 1).**

**Second, we recommend that USDA define “equitable contribution” as the *full amount* of the crop insurance premium paid by the FCIC for all years the person was in violation.**

**Third, in cases where producers provide an equitable contribution for their violation, the underlying mitigation language should still apply and the producer should still be required to mitigate the wetland conversion to retain premium assistance eligibility. As the final Farm Bill Conference Report states: “*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.*”**

- 6) The 2014 Farm Bill dictates that, for both the 150 percent payment-in-lieu-of-ineligibility provision and the equitable contribution provision (recommendations 4 and 5), payments should be deposited into a contribution account, as described in section 1241(f) of the Food Security Act of 1985. For the payment-in-lieu provision, the Bill simply directs USDA to use the fund “for wetland restoration.” For the equitable contribution provision, the Bill provides no guidance at all on how the fund should be used. Section 1241(f) of the Food Security Act of 1985 states: “the Secretary may establish a sub-account for each conservation program administered by the Secretary under subchapter IV to accept contributions of non-Federal funds to support the purposes of the program.”

**Given that the purpose of wetland conservation compliance is to conserve and restore wetland functions and values; and**

**Given that non-federal funds deposited into contribution accounts authorized by Section 1241(f) of the Food Security Act are to be used to support the implementation of conservation programs administered by the Secretary under subchapter IV, which includes authorities for USDA conservation financial assistance programs but does not include authorities for HEL and wetland conservation compliance;**

**We recommend that USDA use the funds deposited into the contribution account to fund wetland conservation and restoration through the wetland easements portion of the Agricultural Conservation Easement Program (ACEP).**

- 7) Mitigation ratio

The 2014 Farm Bill 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 recommend that USDA follow the letter of the law and implement mitigation in such a way that retains or improves wetland functions and values.**

- 8) Spot checking

According to NRCS data, compliance spot checks are occurring on less than one percent of all farm tracts subject to conservation compliance. In order for conservation compliance to remain a meaningful deterrent to resource-degrading practices, we believe NRCS must increase this spot check rate, especially as the new crop insurance rules kick in.

**We recommend that NRCS NHQ issue a national directive to urge all NRCS state offices to conduct spot checks at a rate of five percent, to the maximum extent practicable. If additional resources are necessary to increase the spot check rate, we urge the Department to establish a new policy to fund the spot check and enforcement system from the Commodity Credit Corporation.**

We very much appreciate your consideration of these recommendations, and we look forward to

continued engagement to successfully implement the 2014 Farm Bill and enhance the delivery of conservation compliance.

Sincerely,



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