



Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

RIN 0560-AI26

Conservation Compliance

AGENCY: Office of the Secretary and Farm Service Agency, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends the U.S. Department of Agriculture (USDA) regulations that specify the conservation compliance requirements that participants in USDA programs must meet to be eligible for certain USDA benefits. The USDA benefits to which conservation compliance requirements currently apply include marketing assistance loans, farm storage facility loans, and payments under commodity, disaster, and conservation programs. The conservation compliance requirements apply to land that is either highly erodible land (HEL) or that is wetlands. This rule amends the regulations to implement the Agricultural Act of 2014 (2014 Farm Bill) provisions that: make the eligibility for Federal crop insurance premium subsidy benefits subject to conservation compliance requirements; and convert the wetland mitigation banking pilot to a program and authorizes \$ 10 million for the Secretary to operate a wetland mitigation banking program. This rule specifies the conservation compliance requirements, exemptions, and deadlines that apply in determining eligibility for Federal crop insurance

premium subsidy from the Federal Crop Insurance Corporation (FCIC). This rule also modifies easement provisions relating to mitigation banks as specified in the 2014 Farm Bill, and clarifies provisions regarding the extent of agency discretion with respect to certain violations.

DATES: Effective date: **[Insert date of publication in the FEDERAL REGISTER].**

Date to certify compliance for Federal crop insurance premium subsidy for 2016 reinsurance year: June 1, 2015.

Comment date: We will consider comments that we receive by **[Insert date 60 days after publication in the FEDERAL REGISTER].**

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, include the Regulation Identifier Number (RIN) and the volume, date, and page number of this issue of the Federal Register. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail, hand delivery, or courier: Daniel McGlynn, Production, Emergencies and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), MAIL STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250-0517.

Comments will be available online at <http://www.regulations.gov>. In addition, comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the FSA home page at <http://www.fsa.usda.gov/>.

FOR FURTHER INFORMATION CONTACT: Daniel McGlynn; telephone: (202) 720 7641. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600.

SUPPLEMENTARY INFORMATION:

Background

The conservation compliance provisions in the current regulations at 7 CFR part 12 were originally authorized by the Food Security Act of 1985 (Pub. L. 99-198, referred to as the 1985 Farm Bill). Generally, the regulations specify that a person is ineligible for certain USDA benefits if they undertake certain activities relating to HEL and wetlands, specifically those involving planting agricultural commodities on HEL or a wetland, or converting a wetland for agricultural purposes.

HEL is cropland, hayland or pasture that can erode at excessive rates. As specified in § 12.21, soil map units and the erodibility index are used as the basis for identifying HEL. The erodibility index is a numerical value that expresses the potential erodibility of a soil in relation to its soil loss tolerance value without consideration of applied conservation practices or management. A field is identified as highly erodible if it contains a critical amount of soil map units with an erodibility index of eight or more. If a producer has a field identified as HEL, that producer is required to maintain a conservation system of practices that keeps erosion rates at a substantial reduction of soil loss in order to receive certain USDA benefits. Additional information can be found at http://www.nrcs.usda.gov/wps/portal/nrcs/detail/wi/programs/?cid=nrcs142p2_020795.

A "wetland" is an area that has a predominance of wet soils; is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a

prevalence of water tolerant vegetation typically adapted for life in saturated soil conditions; and under normal circumstances supports a prevalence of such vegetation.

The major difference between the prior regulations for conservation compliance in 7 CFR part 12 and this rule is that persons who seek eligibility for Federal crop insurance premium subsidy must comply with the conservation compliance requirements as specified in this rule. Many persons who obtain Federal crop insurance already receive benefits from other USDA programs, for example, FSA programs that also require compliance with the conservation compliance rules. Therefore, this new requirement will only be a change for those persons who will be required to comply with the conservation compliance rules for the first time because of the 2014 Farm Bill.

The amendments made by section 2611 of the 2014 Farm Bill to the conservation compliance rules only apply to eligibility for FCIC paid premium subsidy. In addition, the time between the final determination of a violation and the loss of eligibility for Federal crop insurance premium subsidy is different from the other conservation compliance rules as described below. Therefore, while a violation of conservation compliance rules may not trigger an immediate loss of Federal crop insurance premium subsidy, it may trigger an immediate loss of other USDA program benefits, including any FSA and Natural Resources Conservation Service (NRCS) benefits specified in 7 CFR 12.4(d) and (e). Nothing in this rule changes violations that may result from other laws or regulations under the responsibility of another Federal government agency.

This interim rule amends the conservation compliance regulations in 7 CFR part 12 to:

- 1) Implement 2014 Farm Bill (Pub. L. 113-79) provisions that make the eligibility for Federal crop insurance premium subsidies subject to conservation compliance provisions;
- 2) Modify easement provisions relating to mitigation banks as specified in the 2014 Farm Bill; and
- 3) Clarify provisions regarding the extent of agency discretion with respect to certain violations.

This rule also implements sections 2609 and 2611 of the 2014 Farm Bill which amend provisions related to wetland mitigation banking and clarifies provisions regarding the extent of agency discretion with respect to certain violations. The provisions in this rule apply to all actions taken after February 7, 2014 (the date of enactment of the 2014 Farm Bill) by persons participating in USDA's crop insurance program.

FSA handles conservation compliance administrative functions, while technical determinations regarding HEL and wetlands are made by NRCS. The 2014 Farm Bill extends conservation compliance requirements to the eligibility for Federal crop insurance premium subsidy. Federal crop insurance is authorized by the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1501-1524). The Federal crop insurance program is administered by the Risk Management Agency (RMA) on behalf of FCIC. Persons can obtain Federally subsidized crop insurance from Approved Insurance Providers (AIP), which are approved by RMA, on behalf of FCIC, to sell and service Federal crop insurance policies. The Federal crop insurance policies issued by these AIP are reinsured by FCIC in accordance with the FCIA. The FCIA also authorizes FCIC to subsidize

Federal crop insurance premiums charged for the coverage provided by the Federal crop insurance policies reinsured by FCIC.

FCIC published an interim rule on July 1, 2014, (79 FR 37155-37166) that amended the Federal crop insurance regulations to implement the same conservation compliance provisions from section 2611 of the 2014 Farm Bill as this rule in 7 CFR parts 400, 402, 407, and 457. This rule is needed to make conforming changes to the general USDA regulations in 7 CFR part 12 that apply to programs from multiple USDA agencies.

New Federal Crop Insurance Subsidy Conservation Compliance Eligibility Provisions

Section 2611 of the 2014 Farm Bill links conservation compliance to eligibility for Federal crop insurance premium subsidies paid by FCIC. Section 2611 provides exemptions and extended deadlines for certain persons to achieve compliance.

Persons who have not participated in, and were not affiliated with any person who participated in, any USDA program for which conservation compliance was a requirement will have additional time to develop and comply with an NRCS approved conservation plan for HEL. Section 2611(a)(2)(C) of the 2014 Farm Bill provides that persons who are subject to the HEL conservation requirements for the first time solely because of the linkage of conservation compliance to eligibility for Federal crop insurance premium subsidy will have 5 reinsurance years to develop and comply with a conservation plan approved by NRCS before they become ineligible for Federal crop insurance premium subsidies.

The beginning of the 5 reinsurance year period depends on whether a HEL determination was made on any of the land in the person's farming operation and whether administrative appeal rights have been exhausted for that determination. The 5 reinsurance year period begins:

- For persons who have no land with an NRCS HEL determination, the 5 reinsurance years begins the start of the reinsurance year (July 1) following the date NRCS makes a HEL determination and the person exhausts all their administrative appeals.
- For persons who have any land for which a NRCS HEL determination has been made and all administrative appeals have been exhausted, the 5 reinsurance years begins the start of the reinsurance year (July 1) following the date the person certifies compliance with FSA to be eligible for USDA benefits subject to the conservation compliance provisions.

Any affiliated person of a person requesting benefits that are subject to HEL and wetland conservation provisions must also be in compliance with those provisions. Such affiliated persons must also file a Form AD-1026 if the affiliated person has a separate farming interest. "Affiliated persons" include, with some exceptions, the spouse and minor child of the person; the partnership, joint venture, or other enterprise in which the person, spouse, or minor child of the person has an ownership interest or financial interest; and a trust in which the individual, business enterprise, or any person, spouse, or minor child is a beneficiary or has a financial interest. In the case of a violation, the offending person and affiliated persons such as spouses and entities in which the

offending person has an interest will lose benefits at all their farming operation locations, not just the locale of the violation.

In addition to the time lags and deadlines applicable to initial compliance with this new conservation compliance requirement, there are exemptions and reasonable timeframes to comply for later conservation compliance issues. The exemptions and timelines described below apply only to eligibility for Federal crop insurance premium subsidies, and not compliance requirements for other USDA programs. As specified in the 2014 Farm Bill and in this rule, ineligibility for Federal crop insurance premium subsidy because of a conservation compliance violation, whether associated with HEL or wetlands, will apply to reinsurance years after the date of a final determination of a violation, including all administrative appeals. Reinsurance years start on July 1 of any given year and end the following June 30. As an example, suppose that USDA determines that a violation occurred during the 2017 calendar year, and the determination is final, including all administrative appeals, on November 15, 2017, which is during the 2018 reinsurance year. The person will be ineligible for Federal crop insurance premium subsidy no earlier than the 2019 reinsurance year, which begins on July 1, 2018, and will remain ineligible until the violation is remedied. The person will remain eligible for a premium subsidy on any policies with a sales closing date before July 1, 2018.

In the case of wetland conservation requirements, as noted earlier, ineligibility for premium subsidy due to a violation of the wetland conservation provisions will be limited to wetland conservation violations that occur after February 7, 2014, and for which a final determination has been made and administrative appeals have been exhausted. The 2014 Farm Bill also provides a limited exemption for wetland conservation violations that

occur after February 7, 2014, but before Federal crop insurance for an agricultural commodity becomes available to the person for the first time. This exemption provides up to 2 reinsurance years to mitigate such conversions. This rule specifies that USDA will consider Federal crop insurance to be “available” to the person if in any county in which the person had any interest in any acreage there is an FCIC-approved policy or plan of insurance available on the county actuarial documents that provide insurance for the crop, or the person obtained a written agreement to insure the crop in any county.

A person that is subject to wetland conservation provisions for the first time as a result of the 2014 Farm Bill will have 2 reinsurance years after the reinsurance year in which the final determination of violation is made, including all administrative appeals, to initiate a mitigation plan to remedy or mitigate the violation before they become ineligible for Federal crop insurance premium subsidies.

Persons not subject to the wetland conservation provisions for the first time as a result of the 2014 Farm Bill will have 1 reinsurance year after the reinsurance year in which the final determination of violation is made, including all administrative appeals, to initiate a mitigation plan to remedy or mitigate the violation before they become ineligible for Federal crop insurance premium subsidies.

Persons determined ineligible for premium subsidy paid by FCIC for a reinsurance year will be ineligible for a premium subsidy on all their policies and plans of insurance, unless the specific exemptions apply.

The 2014 Farm Bill included tenant relief provisions applicable to the wetland conservation provisions, but only for Federal crop insurance premium subsidies. In addition, the 2014 Farm Bill amendments made the HEL tenant relief provisions

applicable to eligibility for Federal crop insurance premium subsidies. In both cases, the tenant relief provisions provide that the Secretary may limit ineligibility only to the farm that is the basis for the ineligibility. Federal crop insurance policies under FCIA are constructed on the basis of persons, counties, and units, which may include multiple farms. Although the 2014 Farm Bill used the word “farm,” FCIC does not allow for differing terms of insurance on a “farm” basis, and therefore, does not provide premium subsidies on such basis. Therefore, with regard to Federal crop insurance premium subsidy, application of the tenant relief provisions will be achieved through a prorated reduction of premium subsidy on all of a person’s policies and plans of insurance. Specifically, a tenant’s or sharecropper’s premium subsidy on all policies and plans of insurance will be reduced, in lieu of ineligibility for all premium subsidy, when the tenant or sharecropper made a good faith effort to comply with the conservation compliance provisions, the owner of the farm refuses to allow the tenant or sharecropper to comply with the provisions, FSA determines there is no scheme or device, and the tenant or sharecropper complies with the provisions that are under their control. The reduction in premium subsidy will be determined by comparing the total number of cropland acres on the farm on which the violation occurs to the total number of cropland acres on all farms in the nation in which the tenant or sharecropper has an interest. The farms and cropland acres used to determine the reduction percentage will be the farms and cropland acres of the tenant or sharecropper for the reinsurance year in which the tenant or sharecropper is determined ineligible. The percentage reduction will be applied to all policies and plans of insurance of the tenant or sharecropper in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible. A

landlord's premium subsidy on all policies and plans of insurance will be prorated in the same manner when the landlord is determined in violation because of the actions or inactions of their tenant or sharecropper.

Persons who were subject to HEL conservation requirements in the past because they participated in USDA programs, stopped participating in those programs before February 7, 2014, but would have been in violation of the HEL requirements had they continued participation in such programs after February 7, 2014, have 2 reinsurance years to develop and comply with a conservation plan approved by NRCS before they become ineligible for Federal crop insurance premium subsidies. The 2 reinsurance years begins the start of the reinsurance year (July 1) following the date the person certifies compliance with FSA to be eligible for USDA benefits subject to the conservation compliance provisions.

For some wetland conversions that impact less than 5 acres on the entire farm, a person may regain eligibility for Federal crop insurance premium subsidy by making a payment equal to 150 percent of the cost of mitigation of the converted wetland in lieu of restoring or mitigating the lost wetland functions and values. The applicability of this exemption is at the discretion and approval of NRCS and the funds will be deposited in an account to be used later for wetland restoration. This exception is in lieu of the mitigation actions that a person would otherwise be required to conduct to restore the lost wetland functions and values of the converted wetland. While it provides flexibility to a person for how to remedy a small acreage violation, the text of the exception indicates that the intention of the 2014 Farm Bill is to limit the scope of its availability, specifying that it applies to any violation that "impacts less than 5 acres of the entire farm." To

ensure that this exception can be appropriately tracked and limit the potential for its abuse, the regulation specifies that a person is limited to only one exemption per farm. This is a discretionary change USDA is making to ensure the integrity of the intention that it impacts less than 5 acres of the entire farm and not just 5 acres per occurrence, which could add up to impacting much more than the intended 5 acres. Additionally, USDA clarifies in the regulation that the payment to the fund is not refundable, even if the person subsequently restores the wetland that had been converted. This exemption applies only to eligibility for Federal crop insurance premium subsidies.

For wetland conservation violations, if the person acted in good faith and without intent to commit the violation, FSA may waive the ineligibility provisions for 2 reinsurance years to allow the person to remedy or mitigate the converted wetland.

What Federal Crop Insurance Participants Must Do to Remain Eligible for Premium Subsidies

As required by section 2611 of the 2014 Farm Bill, all persons seeking eligibility for Federal crop insurance premium subsidy must have on file a certification of compliance (AD-1026) at the local FSA office.

For the 2016 and every subsequent reinsurance year, the deadline to file a Form AD-1026 is June 1 prior to the reinsurance year. Outreach and informational materials for the 2016 reinsurance year will include information on how to contact the local FSA office. Persons must have a Form AD-1026 on file with FSA on or before the June 1 prior to the beginning of a given reinsurance year (which begins on July 1). A person will have until the first applicable crop insurance sales closing date to provide the

information for a Form AD-1026 if the person either is unable to file a Form AD-1026 by June 1 due to circumstances beyond the person's control, or the person in good faith filed a Form AD-1026 and FSA subsequently determined that additional information is needed but the person is unable to comply by July 1 due to circumstances beyond the person's control. A new AD-1026 only needs to be filed if a change in the farming operation has occurred that results in the previously filed AD-1026 being incorrect, or there has been a violation of the HEL or wetland conservation provisions negating the previously filed AD-1026.

On Form AD-1026, persons self-certify compliance with HEL and wetland conservation requirements. If the person indicates on the form that they have conducted an activity that might lead to a violation, such as creating new drainage systems, land leveling, filling, dredging, land clearing, excavation, or stump removal since 1985 on their land, they will be asked for additional information that will be forwarded to NRCS for evaluation. If NRCS fails to complete an evaluation of the person's Form AD-1026, or successor form in a timely manner after all documentation has been provided to NRCS, the person will not be ineligible for Federal crop insurance premium subsidies for a policy or plan of insurance for a violation that occurred prior to NRCS completing the evaluation.

Failure to timely file a Form AD-1026 will result in ineligibility for Federal crop insurance premium subsidies for the entire reinsurance year, unless the person can demonstrate they began farming for the first time after June 1 but prior to the beginning of the reinsurance year. For example, a person who started farming for the first time on June 15, 2015, will be eligible for Federal crop insurance premium subsidies for the 2016

reinsurance year without a Form AD-1026 on file with FSA. However, in that case, the person must file Form AD-1026 with FSA on or before June 1, 2016 to be eligible for premium subsidy for the 2017 reinsurance year.

Failure to notify USDA and revise the Form AD-1026 when required may result in assessment of a monetary penalty, as determined by NRCS, but the penalty will never exceed the total amount of Federal crop insurance premium subsidy paid by FCIC for the person on all policies and plans of insurance for all years the person is determined to have been in violation. The monetary penalty is assessed for wetland conservation compliance only.

USDA Service Centers will provide additional information and assistance to persons in meeting compliance requirements. USDA will determine a person's eligibility for premium subsidy paid by FCIC at a time that is as close to the beginning of the next reinsurance year (July 1) as practical. The determination will be based on FSA and NRCS determinations regarding conservation compliance. For example, a person who has a determination of ineligibility that is final on June 1, 2015, (2015 reinsurance year) will, unless otherwise exempted, be ineligible for premium subsidy effective July 1, 2015, the start of the 2016 reinsurance year, and will not be eligible for any premium subsidy for any policies or plans of insurance during the 2016 reinsurance year. Even if the person becomes compliant during the 2016 reinsurance year, the person will not be eligible for premium subsidy until the 2017 reinsurance year, starting on July 1, 2016.

For acts or situations of non-compliance or failure to certify compliance according to this part, ineligibility for Federal crop insurance premium subsidies will be

applied beginning with the 2016 reinsurance year for any Federally reinsured policy or plan of insurance with a sales closing date on or after July 1, 2015.

Changes to Mitigation Bank Program Required by the 2014 Farm Bill

The rule also implements section 2609 of the 2014 Farm Bill, which amends provisions related to wetland mitigation banking. Wetland mitigation banking is a form of environmental market trading where wetlands are created, enhanced, or restored to create marketable wetland credits (acres and functions). The 1985 Farm Bill, the Clean Water Act, and some State wetland laws specify that negative impacts to existing wetlands can be mitigated by providing restored, enhanced, or created wetlands as compensation for the losses. The replacement of impacted wetlands with new wetlands is called wetland mitigation. Wetland mitigation banking is a type of wetland mitigation where wetlands are created, enhanced, or restored prior to impacts and the wetlands are sold to those required to compensate for the impacts. These credits are sold to others as compensation for unavoidable wetland impacts. For more information on the existing wetlands mitigation banking program, see <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/water/wetlands/wmb/>.

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. However, agricultural mitigation options are limited, and, to date, mitigation banks are not abundant nor are they readily accessible. Section 2609 of

the 2014 Farm Bill provides \$10 million of the USDA's Commodity Credit Corporation funds to operate a mitigation banking program and allows USDA to have third parties hold the wetland mitigation easements, rather than USDA itself.

NRCS is modifying the mitigation bank provisions in this rule to clarify who may hold title to wetland mitigation easements under the wetland conservation provisions. The existing regulations require that the person grant an easement to USDA to protect the wetland that is providing the mitigation of wetland functions and benefits. Section 2609 of the 2014 Farm Bill specifies that USDA is no longer required to hold the easements in a mitigation bank. Therefore, this rule amends 7 CFR 12.5 to authorize other qualifying entities, which are recognized by USDA, to hold mitigation banking easements granted by a person who wishes to maintain payment eligibility under the wetland conservation provision, and remove the requirement that an easement be granted to USDA for mitigation sites when part of a mitigation banking program that is operated by USDA.

To encourage the development of mitigation banks, USDA will implement a prioritized and competitive mitigation banking program through an Announcement of Program Funding that focuses on agricultural wetlands. Application selection criteria will emphasize areas with the greatest opportunities for using wetland banking mitigation for agricultural purposes.

General Provisions and Technical Clarifications

This rule updates the general applicability section by removing unneeded references. Regulation changes in this rule do not affect past obligations and liabilities. Reference to certain former territories of the United States are removed because they

were covered by 1985 Farm Bill provisions as trust territories only and no longer have that status.

This rule also makes a minor revision to the ineligibility determination for wetland conservation violations to make the regulation consistent with the statutory requirement; the change is to clarify the limited circumstances for which partial ineligibility may apply instead of complete ineligibility. Section 1221(b) of the 1985 Farm Bill (16 U.S.C. 3821) allows the Secretary to determine whether all or a part of a person's benefits will be lost because of violations for producing an agricultural commodity on a converted wetland. There are two types of wetland conservation violations in 16 U.S.C. 3821 that may result in ineligibility for some or all of a person's benefits; those violations are production on converted wetland (16 U.S.C. 3821(a)) and wetland conversion (16 U.S.C. 3821(d)) for the purpose of agricultural production. The consequences for the two types of wetland conservation violations are not the same. For production on converted wetland, 16 U.S.C. 3821(a)(2) specifies that the person's ineligibility is to be in an amount determined by the Secretary to be proportionate to the severity of the violation and 16 U.S.C. 3821(b) further specifies that if a person is determined to have produced an agricultural commodity on converted wetland, the Secretary determines which of, and the amount of, benefits for which the person will be ineligible due to that violation. For a wetland conversion violation, 16 U.S.C. 3821(d) provides that if a person converts a wetland making the production of an agricultural commodity possible on such converted wetland, the person will be ineligible for benefits for that crop year and all subsequent crop years. There is no authority under 16 U.S.C. 3821 for the Secretary to make a determination of only partial

ineligibility for a wetland conversion violation, or allow a reduction in benefits proportionate to the severity of the violation or a limited reduction to certain benefits or amounts instead of complete ineligibility. Unless an exemption applies, a wetland conversion violation results in ineligibility for all benefits for the year of violation and all subsequent years. In the past, the text in § 12.4(c) has been used by persons who have been determined to have converted a wetland to argue that the Secretary has discretion to partially reduce ineligibility for a wetland conversion in the same manner allowed by 16 U.S.C. 3821 for a violation of production on converted wetland. There is no such discretion authorized under 16 U.S.C. 3821 for a wetland conversion; therefore, the reference to a potential reduction in ineligibility for wetland conversion is being removed by this rule. The specific change is to remove the reference to paragraph (a)(3) for the potential ineligibility reduction.

A section with obsolete information on information collection requirements is removed.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the Federal Register and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. Section 2608 of the 2014 Farm Bill requires that the programs of Title II be implemented by interim rules effective on publication with an opportunity for notice and comment.

Comments Requested

The primary purpose of this rule is to revise USDA conservation compliance regulations to incorporate the 2014 Farm Bill provisions that make persons receiving Federal crop insurance premium subsidies subject to conservation compliance requirements. As noted above, FCIC published an interim rule on July 1, 2014, that amended Federal crop insurance regulations to implement this provision from section 2611 of the 2014 Farm Bill. This rule is making conforming changes to the general USDA regulations in 7 CFR part 12 that apply to programs from multiple USDA agencies.

The amendments made by section 2611 of the 2014 Farm Bill, and included in this rule, extend the existing conservation compliance requirements to apply to FCIC premium subsidy recipients. Section 2611 does not include any changes to the existing requirements for conservation compliance (often referred to as “Sodbuster” and “Swampbuster”) specified in the 1985 Farm Bill and in 16 U.S.C. 3801-3824, the definition of HEL, the Wetland Conservation Program, or other conservation programs. However, in the context of making the regulatory changes required by section 2611, we are requesting comments on specific changes USDA could consider making.

For example, all persons who produce agricultural commodities are required to protect all cropland classified as HEL from excessive erosion as a condition of eligibility for USDA programs. On lands which have a cropping history prior to December 23, 1985, compliance conservation systems must result in a “substantial reduction” in soil erosion. On lands converted to crop production after December 23, 1985, compliance conservation systems must result in “no substantial increase” in soil erosion. USDA has

a goal of working with farmers to help them stay in compliance or bring them into compliance through progressive planning and implementation. We welcome comments on what additional steps USDA could take to achieve these goals. Agricultural production techniques have changed significantly since the passage of the 1985 Farm Bill. While conservation systems provide a substantial reduction in soil erosion, are there additional conservation activities that USDA could consider to ensure that agricultural production and soil erosion reduction goals from HEL soils are met?

As another example, since December 23, 1985, the “Swampbuster” provision helps preserve the environmental functions and values of wetlands, including flood control, sediment control, groundwater recharge, water quality, wildlife habitat, recreation, and esthetics. Agricultural production techniques have changed significantly since the passage of the 1985 Farm Bill. Are there additional steps USDA should consider to ensure these benefits for wetlands are retained?

In your comments, please suggest specific alternatives and provide data, if available, for the suggestion as it relates to the goals of conservation compliance. Specifically, USDA requests comments on the following questions:

- What information could USDA collect to simplify the conservation compliance process, expedite determinations, and allow the USDA to identify more complex determination requests to evaluate first?
- What information could USDA reasonably collect that would provide more information on derived conservation benefits from conservation compliance activities? What would be the burden of collecting that information?

- With the addition of new persons being subject to conservation compliance requirements, how should USDA prioritize the evaluation of the submitted Form AD-1026 information?

USDA is also requesting comments on conservation compliance for the retrospective review of regulations initiative. In accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” and Executive Order 13610, “Identifying and Reducing Regulatory Burdens,” USDA continues to review its existing regulations as well as its methods for gathering information. This evaluation helps USDA to measure its effectiveness in implementing its regulations. The review will continue to focus on:

- Identifying whether information technology can be used to replace paper submissions with electronic submissions;
- Streamlining or redesigning existing information collecting methods in order to reduce any burdens on the public for participating in and complying with USDA programs;
- Reducing duplication through increased data sharing and harmonizing programs that have similar regulatory requirements; and
- Providing increased regulatory flexibility to achieve desired program outcomes and save money.

Please provide information on these issues in your comment as specified in the ADDRESSES section. Specific comments addressing the issues raised above are most helpful; all comments are welcome. Proposals for alternatives should address data sources, costs, and the provisions of the 2014 Farm Bill that support the alternative. The

following suggestions may be helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and data on which you based your views.
- Provide specific examples to illustrate your points.
- Offer specific alternatives to the current regulations or policies and indicate the source of necessary data, the estimated cost of obtaining the data, and how the data can be verified.
- Submit your comments to be received by FSA by the comment period deadline.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. However, Section 2608 of the 2014 Farm Bill provides that this interim rule be effective on publication.

Executive Orders 12866 and 13563

Executive Order 12866 “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to

select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity).

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, “Regulatory Planning and Review,” and, therefore, OMB has reviewed this rule. A summary of the cost-benefit analysis of this rule is provided below and the full cost benefit analysis is available on regulations.gov.

Cost Benefit Analysis Summary

Estimated costs to persons and the government through 2020 are expected to be between \$55 million and \$86.5 million for the conservation compliance requirements and \$10 million for the wetlands mitigation banking that reflects new authority to operate or work with third parties to operate a wetland mitigation banking program. These are the total costs, not annual costs. While the \$10 million may increase wetland mitigation bank activity, the negligible amount in the agricultural context to date makes it impossible to estimate the impact this will have on conservation compliance costs.

Implementing the 2014 Farm Bill provisions for conservation compliance is expected to result in benefits of extending HEL and wetland conservation provisions to up to 1.5 million acres of HEL and 1.1 million acres of wetlands, which could reduce soil erosion, enhance water quality, and create wildlife habitat.

For the conservation compliance requirements, given that most persons who have Federal crop insurance are already subject to conservation compliance due to

participation in other USDA programs, the benefits as a whole are expected to extend HEL and wetland conservation provisions to up to 1.5 million acres of HEL and 1.1 million acres of wetlands and could reduce soil erosion, enhance water quality, and create wildlife habitat. Ecological benefits could be measurable on individual properties if those properties were not previously subject to conservation compliance and were not in compliance, which is not expected to be common. We estimate that between 16,000 and 25,000 persons or entities will be impacted by the expanded requirements, and that slightly less than a third of those producers will need a conservation plan.

The conservation compliance provisions have been in place since 1985, and the interim rule will not impose any new compliance costs on persons that were already in compliance. There will be increased training and staffing costs associated with ensuring that NRCS staff conduct HEL and wetland determinations correctly for persons who receive subsidy premiums for Federal crop insurance. Government costs for making wetlands and HEL determinations, developing conservation plans for producers, providing technical assistance, and providing financial assistance with implementation costs for conservation practices, are expected to total between \$19.7 million and \$30.9 million between 2015 and 2020. Producers' costs for implementing conservation practices to achieve compliance are estimated at between \$35.3 million and \$55.5 million between 2015 and 2020, for a one-time overall cost to the government and to producers combined of \$55 million to \$86.5 million.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. All conservation compliance eligibility requirements are the same for all persons regardless of the size of their farming operation. This rule is not subject to the Regulatory Flexibility Act because the Secretary of Agriculture and FSA are not required by any law to publish a proposed rule for this rulemaking initiative.

National Environmental Policy Act (NEPA)

The environmental impacts of this rule have been considered in a manner consistent with the provisions of NEPA (42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The 2014 Farm Bill mandates the expansion of current conservation compliance requirements to apply to persons who obtain subsidized Federal crop insurance under FCIA and it slightly modifies the existing wetlands “Mitigation Banking” program to remove the requirement that USDA hold easements in the mitigation program. These are mandatory provisions and USDA does not have discretion over whether or not they are implemented. We have determined that the limited discretion in the way in which the mandatory provisions can be implemented

are administrative clarifications of aspects that were not defined in the mandatory provisions; therefore, they are not subject to review under NEPA. As such, USDA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the Federal Register on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The rule has retroactive effect in that the provisions in this rule apply to all actions taken after February 7, 2014, (the date of enactment of the 2014 Farm Bill) by USDA program participants. Before any judicial action may be brought regarding the provisions of this rule, appeal provisions of 7 CFR parts 11, 614, and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

USDA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA, NRCS, or RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4). In addition, the Secretary of Agriculture is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

This rule has a potential impact on participants for many programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture.

Paperwork Reduction Act

Section 2608 of the 2014 Farm Bill provides that regulations issued under Title II – Conservation are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

E-Government Act Compliance

USDA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 12

Administrative practice and procedure, Coastal zone, Crop insurance, Flood plains, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Soil conservation.

For the reasons explained above, USDA amends 7 CFR part 12 as follows:

PART 12 – HIGHLY ERODIBLE LAND CONSERVATION AND WETLAND CONSERVATION

1. The authority citation for 7 CFR part 12 is revised to read as follows:

Authority: 16 U.S.C. 3801, 3811-12, 3812a, 3813-3814, and 3821-3824.

2. Revise the heading for part 12 to read as set forth above.

3. In § 12.2(a) add definitions, in alphabetical order, for “Approved insurance provider,” “FCIC,” “Reinsurance year,” and “RMA” to read as follows:

§ 12.2 Definitions.

(a) * * *

Approved insurance provider means a private insurance company that has been approved and reinsured by FCIC to provide insurance coverage to persons participating

in programs authorized by the Federal Crop Insurance Act, as amended (7 U.S.C. 1501-1524).

* * * * *

FCIC means the Federal Crop Insurance Corporation, a wholly owned corporation within USDA whose programs are administered by RMA.

* * * * *

Reinsurance year means a 1-year period beginning July 1 and ending on June 30 of the following year, identified by reference to the year containing June.

* * * * *

RMA means the Risk Management Agency, an agency within USDA that administers the programs of the FCIC through which Federally reinsured crop insurance is provided to American farmers and ranchers.

* * * * *

4. Revise § 12.3 to read as follows:

§ 12.3 Applicability.

(a) The provisions of this part apply to all land, including Indian tribal land, in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) The rules in this part are applicable to all current and future determinations on matters within the scope of this part. Nothing in these rules relieves any person of any liability under previous versions of these rules.

(c) Notwithstanding paragraph (b) of this section, for the purpose of eligibility for Federal crop insurance premium subsidy for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524), the provisions of this part apply to final HEL and wetland conservation determinations, including all administrative appeals, after February 7, 2014, on matters within the scope of this part.

(1) For acts or situations of non-compliance or failure to certify compliance according to this part, ineligibility for Federal crop insurance premium subsidies will be applied beginning with the 2016 reinsurance year for any Federally reinsured policy or plan of insurance with a sales closing date on or after July 1, 2015.

(2) [Reserved]

5. Amend § 12.4 as follows:

a. In paragraph (a), introductory text, remove the cross reference “in § 12.5” and add the cross reference “in §§ 12.5 or 12.13” in its place;

b. In paragraph (a)(2), remove the words “on wetland” and add the words “on a wetland” in their place;

c. In paragraph (c):

i. At the beginning of the first and second sentences, remove the words “A person” and add the words “Except as provided in § 12.13, a person” in their place;

ii. In the first and second sentences, remove the words “shall be” and replace them with the word “is”;

iii. In the third sentence, remove the cross reference “or (a)(3)”;

iv. In the fourth sentence, remove the words “shall be considered to” and replace it with the word “will be considered in”;

- d. Revise paragraph (d)(1);
- e. In paragraph (d)(5), remove the period at its end and add the word and punctuation “and;” in its place;
- f. Add paragraph (d)(6); and
- g. Remove paragraph (f) and redesignate paragraphs (g) and (h) as paragraphs (f) and (g), respectively.

The revisions and addition read as follows:

§ 12.4 Determination of ineligibility.

* * * * *

(d) * * *

(1) Contract payments, marketing assistance loans, and any type of price support or payment made available under the Agricultural Act of 2014, the Commodity Credit Corporation Charter Act (15 U.S.C. 714b and 714c), or successor Acts.

* * * * *

(6) Federal crop insurance premium subsidies for a policy or plan of insurance offered under the Federal Crop Insurance Act (7 U.S.C. 1501-1524).

* * * * *

§ 12.5 [Amended]

6. Amend § 12.5 as follows:

- a. In paragraph (b)(4)(i)(C), remove the word “pilot”; and
- b. In paragraph (b)(4)(i)(E), add the words and punctuation “or in the case of a mitigation bank operated under a USDA program, an entity approved by USDA,” immediately after the word “USDA”.

7. Amend § 12.6 as follows:

- a. Revise paragraph (a);
- b. In paragraph (b)(3)(x), add the words “plan or” immediately before the word “system”;
- c. In paragraph (c)(1), remove the words “Deputy Chief for Natural Resources Conservation Programs” and add the words “Associate Chief for Conservation” in their place;
- d. In paragraph (c)(2)(iii)(B), remove the word “By”; and
- e. Add paragraphs (c)(10), (f), and (g).

The revision and additions read as follows:

§ 12.6 Administration.

(a) General. In general determinations will be made as follows:

(1) Except as provided in paragraph (a)(2) of this section, a determination of ineligibility for benefits in accordance with the provisions of this part will be made by the agency of USDA to which the person has applied for benefits. All determinations required to be made under the provisions of this part will be made by the agency responsible for making such determinations, as provided in this section.

(2) Eligibility for Federal crop insurance premium subsidies will be based on final determinations, including all administrative appeals, made by NRCS and FSA. Neither RMA, FCIC, approved insurance providers, or any employee, agent, or contractors thereof, will make any determination regarding compliance with the highly erodible land or wetland provisions of this part, unless specifically provided for in § 12.13.

* * * * *

(c) * * *

(10) NRCS will operate a program or work with third parties to establish mitigation banks to assist persons in complying with §§ 12.4(c) and 12.5(b)(4). Persons will be able to access mitigation banks established or approved through this program without requiring the Secretary to hold an easement in a mitigation bank.

* * * * *

(f) Administration by RMA. The provisions of this part that are applicable to RMA will be administered under the general supervision of the Administrator, RMA.

(1) Eligibility for Federal crop insurance premium subsidies will be based on the person's:

(i) Accurate and timely filing of a certification of compliance (Form AD-1026 or successor form) with the conservation compliance provisions; and

(ii) Compliance with the conservation compliance provisions.

(2) Ineligibility for Federal crop insurance premium subsidies due to violations of the conservation compliance provisions will be based on final determinations, including all administrative appeals, made by NRCS and FSA as provided in this part.

(3) Neither RMA nor FCIC will make any determination of eligibility regarding compliance with the highly erodible land or wetland provisions in this part, unless specifically provided for in § 12.13.

(4) RMA will provide the applicable information regarding determinations made by NRCS and FSA to the appropriate approved insurance providers to ensure those

determinations affecting Federal crop insurance premium subsidy eligibility are implemented according to this part.

(g) Approved insurance providers. No approved insurance provider or any employee, agent, or contractor of an approved insurance provider will:

(1) Make any determination of eligibility regarding compliance with the highly erodible land or wetland provisions of this part; or

(2) Be responsible or liable for a person's eligibility for Federal crop insurance premium subsidy under this part, except in cases of fraud, misrepresentation, or scheme and device by the approved insurance provider or any employee, agent, or contractor thereof.

8. Amend § 12.7 as follows:

a. In paragraph (a)(2), remove the cross reference "under § 12.5" and add the cross reference "under §§ 12.5 or 12.13" in its place; and

b. Add paragraph (d).

The revision reads as follows:

§ 12.7 Certification of compliance.

* * * * *

(d) Timely filing. In order for a person to be determined eligible 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), the person must have Form AD-1026 or successor form on file with FSA, as specified in § 12.13.

9. Amend § 12.9 as follows:

a. Revise paragraphs (a) and (b)(1);

- b. Redesignate paragraph (b)(2) as paragraph (b)(3);
- c. Add paragraph (b)(2);
- d. In newly redesignated paragraph (b)(3), remove the word “renter” both times it appears, and add the word “sharecropper” in its place.

The revisions and addition read as follows:

§ 12.9 Landlords and tenants.

(a) Landlord eligibility. Landlord eligibility will include the following:

(1) Except as provided in paragraph (a)(2) of this section, the ineligibility of a tenant or sharecropper for:

(i) Program benefits (as specified in § 12.4) except as provided in paragraph (a)(1)(ii) of this section will not cause a landlord to be ineligible for USDA program benefits accruing with respect to land other than those in which the tenant or sharecropper has an interest; and

(ii) Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524) will, in lieu of ineligibility for premium subsidy, result in a reduction in the amount of premium subsidy paid by FCIC on all policies and plans of insurance for the landlord.

(A) The percentage reduction will be determined by comparing the total number of cropland acres on the farm on which the violation occurred to the total number of cropland acres on all farms in which landlord has an interest, as determined by FSA.

(B) The farms and cropland acres used to determine the premium subsidy reduction percentage will be the farms and cropland acres of the landlord for the reinsurance year in which the tenant or sharecropper is determined ineligible.

(C) The percentage reduction will be applied to all policies and plans of insurance of the landlord in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.

(D) If the landlord and tenant or sharecropper are insured under the same policy, the landlord will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.

(2) If the production of an agricultural commodity on highly erodible land or converted wetland by the landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper and such agreement was entered into after December 23, 1985, or if the landlord has acquiesced in such activities by the tenant or sharecropper:

(i) The provisions of paragraph (a)(1)(i) of this section will not be applicable to a landlord; and

(ii) A landlord will be ineligible for premium subsidy on all policies and plans of insurance in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.

(b) Tenant or sharecropper eligibility. Tenant or sharecropper eligibility will include the following:

(1) If all of the requirements in paragraph (b)(2) of this section are met:

(i) The ineligibility of a tenant or sharecropper, except as provided in paragraph (b)(1)(ii) of this section, may be limited to the program benefits listed in § 12.4(b) accruing with respect to only the farm on which the violation occurred; and

(ii) In lieu of ineligibility for Federal crop insurance premium subsidies for all policies or plans of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524), the premium subsidy on all policies and plans of insurance of the ineligible tenant or sharecropper will be reduced.

(A) The percentage reduction will be determined by comparing the total number of cropland acres on the farm on which the violation occurred to the total number of cropland acres on all farms in which tenant or sharecropper has an interest, as determined by FSA.

(B) The farms and cropland acres used to determine the premium subsidy reduction percentage will be the farms and cropland acres of the tenant or sharecropper for the reinsurance year in which the tenant or sharecropper is determined ineligible.

(C) The percentage reduction will be applied to all policies and plans of insurance of the tenant or sharecropper in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.

(D) If the landlord and tenant or sharecropper are insured under the same policy, the tenant or sharecropper will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.

(2) The provisions of paragraph (b)(1) of this section will not apply unless all the following are met:

(i) The tenant or sharecropper shows that a good-faith effort was made to comply by developing an approved conservation plan for the highly erodible land in a timely manner and prior to any violation of the provisions of this part;

(ii) The owner of such farm refuses to apply such a plan and prevents the tenant or sharecropper from implementing certain practices that are a part of the approved conservation plan; and

(iii) FSA determines that the lack of compliance is not a part of a scheme or device as described in § 12.10.

* * * * *

10. Add § 12.13 to read as follows:

§ 12.13 Special Federal crop insurance premium subsidy provisions.

(a) General. The provisions and exemptions in this section are only applicable to Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524). The exemptions in this section are in addition to any that apply under § 12.5. Any conflict between this section and another will be resolved by applying this section, but only for Federal crop insurance premium subsidies. Any exemptions or relief under this section apply to Federal crop insurance premium subsidies and do not apply to other benefits even for the same person for the same crop year or reinsurance year. Unless otherwise specified in this section, the provisions in this section apply to both highly erodible land and wetlands.

(b) Ineligibility for failing to certify compliance. Subject to paragraphs (b)(2) and (3) of this section, failing to certify compliance as specified in § 12.7 will result in ineligibility as follows:

(1) A Form AD-1026, or successor form, for the person must be on file with FSA on or before June 1 prior to the beginning of the reinsurance year (July 1) in order for the person to be eligible for any Federal crop insurance premium subsidies for the

reinsurance year. Failure to file Form AD-1026, or successor form, with FSA on or before June 1 prior to the beginning of the reinsurance year (July 1) will result in ineligibility for premium subsidies for the entirety of that reinsurance year.

(2) A person will have until the first applicable crop insurance sales closing date to provide information necessary for the person's filing of a Form AD-1026 if the person:

(i) Is unable to file a Form AD-1026 by June 1 due to circumstances beyond the person's control, as determined by FSA; or

(ii) Files a Form AD-1026 by June 1 in good faith and FSA subsequently determines that additional information is needed, but the person is unable to comply by July 1 due to circumstances beyond the control of the person.

(3) A person who does not have Form AD-1026, or successor form, on file with FSA on or before June 1 prior to the beginning of the reinsurance year may be eligible for Federal crop insurance premium subsidy for the subsequent reinsurance year if the person can demonstrate they began farming for the first time after June 1 but prior to the beginning of the reinsurance year (July 1). For example, a person who started farming for the first time on June 15, 2015, will be eligible for Federal crop insurance premium subsidies for the 2016 reinsurance year without a Form AD-1026 on file with FSA. However, in that case, the person must file Form AD-1026 with FSA on or before June 1, 2016 to be eligible for premium subsidy for the 2017 reinsurance year.

(c) Ineligibility for violations. If a person is ineligible due to a violation of the provisions of this part, the timing and results will be as follows:

(1) Unless an exemption in this section or § 12.5 applies, ineligibility for Federal crop insurance premium subsidy for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524) due to a violation of the provisions of this part will:

(i) Not apply to the reinsurance year in which the violation occurred or any reinsurance year prior to the date of the final determination of a violation, including all administrative appeals of the determination, as determined by NRCS or FSA as applicable; and

(ii) Only apply to reinsurance years subsequent to the date of a final determination of a violation, including all administrative appeals of the determination, as determined by NRCS or FSA as applicable. A person who is in violation of the provisions of this part, as determined by FSA or NRCS, in a reinsurance year, will, unless otherwise exempted, be ineligible for any Federal crop insurance premium subsidy beginning with the subsequent reinsurance year. For example, a person who is determined to be in violation of the provisions of this part and has exhausted all administrative appeals on June 1, 2015, (2015 reinsurance year) will, unless otherwise exempted, be ineligible for Federal crop insurance premium subsidy effective July 1, 2015, the start of the 2016 reinsurance year, and will not be eligible for any Federal crop insurance premium subsidy for any policy or plan of insurance during the 2016 reinsurance year. Even if the person becomes compliant during the 2016 reinsurance year, the person will not be eligible for Federal crop insurance premium subsidy until the 2017 reinsurance year starting on July 1, 2016.

(2) Eligibility for Federal crop insurance premium subsidy for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524) due to a violation

of the provisions of this part will be based on FSA and NRCS final determinations, including all administrative appeals, regarding compliance with the provisions of this part.

(3) The amount of premium subsidy for an insured person will be reduced when any person with a substantial beneficial interest in the insured person is ineligible for premium subsidy under this part. The amount of reduction will be commensurate with the ineligible person's substantial beneficial interest in the insured person. The ineligible person's substantial beneficial interest in the insured person will be determined according to the policy provisions of the insured person.

(4) Administrative appeals include appeals made in accordance with § 12.12 and part 11 of this title, but do not include any judicial review or appeal, or any other legal action.

(d) Exemption to develop and comply with an approved HEL conservation plan.

The following exemptions provide a delay in the requirement to develop and comply with an NRCS approved HEL conservation plan for certain persons.

(1) Persons subject to the provisions of this part regarding highly erodible land, specifically those related to section 1211(a) of the Food Security Act of 1985, as amended, for the first time solely due to amendments to that section by section 2611(a) of the Agricultural Act of 2014 (16 U.S.C. 3811(a)(1)), will have 5 reinsurance years after the date the person is determined to have HEL and has exhausted all administrative appeals, if applicable, to develop and comply with a conservation plan approved by NRCS before being ineligible for Federal crop insurance premium subsidies. The additional time to develop and comply with a conservation plan approved by NRCS

applies only to persons who have not previously been subject to the highly erodible land conservation provisions of this part. The additional time provided in this paragraph does not apply to any person who had any interest in any land or crop, including an affiliated person, that was subject to the provisions of this part before February 7, 2014. The 5 reinsurance years to develop and comply with a conservation plan approved by NRCS starts:

(i) For persons who have no land with an NRCS HEL determination, the 5 reinsurance years begins the start of the reinsurance year (July 1) following the date NRCS makes a HEL determination and the person exhausts all their administrative appeals; or

(ii) For persons who have any land for which an NRCS HEL determination has been made and all administrative appeals have been exhausted, the 5 reinsurance years begins the start of the reinsurance year (July 1) following the date the person certifies compliance with FSA to be eligible for USDA benefits subject to the conservation compliance provisions.

(2) Persons who meet all the following criteria will have 2 reinsurance years from the start of the reinsurance year (July 1) following the date the person certifies compliance with FSA to be eligible for USDA benefits subject to the conservation compliance provisions to develop and comply with a conservation plan approved by NRCS before being ineligible for Federal crop insurance premium subsidies:

(i) Were subject to the provisions of this part regarding highly erodible land, specifically those related to section 1211(a) of the Food Security Act of 1985 (16 U.S.C. 3811(a)(1)), as amended, any time before February 7, 2014;

(ii) Before February 7, 2014, stopped participating in all USDA programs subject to the provisions of this part regarding highly erodible land;

(iii) Would have been in violation of the provisions of this part regarding highly erodible land had they continued to participate in those programs after February 7, 2014; and

(iv) Are currently in violation of the provisions of this part regarding highly erodible land.

(e) Exemption for prior wetland conversions completed prior to February 7, 2014. No person will 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) for:

(1) Converting a wetland if the wetland conversion was completed, as determined by NRCS, before February 7, 2014; or

(2) Planting or producing an agricultural commodity on a converted wetland if the wetland conversion was completed, as determined by NRCS, before February 7, 2014.

(f) Exemption for wetland conversion that impacts less than 5 acres. The following exemption is for wetland conversion that impacts less than 5 acres of an entire farm:

(1) In lieu of ineligibility 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) due to a wetland conversion violation or concurrent with a planned wetland conversion occurring after February 7, 2014, a person may, if approved by NRCS, pay a contribution

to NRCS in an amount equal to 150 percent of the cost of mitigating the converted wetland, as determined by NRCS.

(2) A person is limited to only one exemption, as determined by NRCS, described in paragraph (f)(1) of this section per farm.

(3) NRCS will not refund this payment even if the person later conducts actions which will mitigate the earlier conversion.

(g) Exemption for wetland conversion when a policy or plan of insurance is available to a person for the first time. The following exemption is for wetland conversion when a policy or plan of insurance is available to the person for the first time.

(1) When a policy or plan of insurance that provides coverage for an agricultural commodity is available to the person, including as a person who is a substantial beneficial interest holder, for the first time after February 7, 2014, as determined by RMA, ineligibility for Federal crop insurance premium subsidies for such policy or plan of insurance due to a wetland conversion violation will only apply to wetland conversions that are completed, as determined by NRCS, after the date the policy or plan of insurance first becomes available to the person.

(2) The exemption described in paragraph (g)(1) of this section:

(i) Applies only to the policy or plan of insurance that becomes available to the person for the first time after February 7, 2014, as determined by RMA;

(ii) Does not exempt or otherwise negate the person's ineligibility for Federal crop insurance premium subsidies on any other policy or plan of insurance; and

(iii) Applies only if the person takes steps necessary, as determined by NRCS, to mitigate all wetlands converted after February 7, 2014, in a timely manner, as determined by NRCS, but not to exceed 2 reinsurance years.

(3) For the purposes of the paragraph (g)(1) of this section:

(i) A policy or plan of insurance is considered to have been available to the person after February 7, 2014, if, after February 7, 2014, in any county in which the person had any interest in any acreage, including as a person who is a substantial beneficial interest holder:

(A) There was a policy or plan of insurance available on the county actuarial documents that provided coverage for the agricultural commodity; or

(B) The person obtained a written agreement to insure the agricultural commodity in any county; and

(ii) Changing, adding, or removing options, endorsements, or coverage to an existing policy or plan of insurance will not be considered as a policy or plan of insurance being available for the first time to a person.

(h) Wetland conversion mitigation exemption. Unless another exemption applies, the following exemption provides additional time to mitigate wetland conversions.

(1) A person determined to be in violation of the provisions of this part due to a wetland conversion occurring after February 7, 2014, will have 1 reinsurance year after the final determination of violation, including all administrative appeals, as determined by NRCS, to initiate a mitigation plan to remedy the violation, as determined by NRCS, before becoming 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.). For example, if in May 2017, after NRCS has determined that a person is in violation for converting a wetland and the person has exhausted all administrative appeals, the person will have until June 30, 2018, to initiate a mitigation plan to remedy the violation before becoming ineligible for Federal crop insurance premium subsidies starting with the 2019 reinsurance year.

(2) Notwithstanding paragraph (h)(1) of this section, if a person determined to be in violation of the provisions of this part due to a wetland conversion occurring after February 7, 2014, as determined by NRCS, and is subject to the provisions of this part for the first time solely due to section 2611(b) of the Agricultural Act of 2014, such person will have 2 reinsurance years after the final determination of violation, including all administrative appeals, as determined by NRCS, to be implementing all practices in a mitigation plan to remedy the violation, as determined by NRCS, before becoming 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).

(3) Administrative appeals include appeals made in accordance with § 12.12 and part 11 of this title, but do not include any judicial review or appeal, or any other legal action.

(i) Good faith exemption. The following is a good faith exemption for wetland conservation:

(1) A person determined by FSA or NRCS to be in violation, including all administrative appeals, of the provisions of this part due to converting a wetland after February 7, 2014, or producing an agricultural commodity on a wetland that was

converted after February 7, 2014, may regain eligibility 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 all of the following criteria are met:

- (i) FSA determines that such person acted in good faith and without the intent to violate the wetland conservation provisions of this part;

- (ii) NRCS determines that the person is implementing all practices in a mitigation plan to remedy or mitigate the violation within an agreed-to period, not to exceed 2 reinsurance years; and

- (iii) The good faith determination of the FSA county or State committee has been reviewed and approved by the applicable State Executive Director, with the technical concurrence of the State Conservationist; or District Director, with the technical concurrence of the area conservationist.

(2) In determining whether a person acted in good faith under paragraph (i)(1)(i) of this section, FSA will consider such factors as whether:

- (i) The characteristics of the site were such that the person should have been aware that a wetland existed on the subject land;

- (ii) NRCS had informed the person about the existence of a wetland on the subject land;

- (iii) The person has a record of violating the wetland provisions of this part or other Federal, State, or local wetland provisions; or

- (iv) There exists other information that demonstrates the person acted with the intent to violate the wetland conservation provisions of this part.

(3) After the requirements of paragraph (i)(1) of this section are met, FSA may waive applying the ineligibility provisions of this section to allow the person to implement the mitigation plan approved by NRCS. The waiver will apply for up to two reinsurance years.

(j) Landlord and Tenant wetland violations relief. The following provides landlord and tenant relief for wetland violations:

(1) Except as provided in (j)(2) of this section, the ineligibility of a tenant or sharecropper 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) will, in lieu of ineligibility for premium subsidy, result in a reduction in the amount of premium subsidy paid by FCIC on all policies and plans of insurance for the landlord.

(i) The percentage reduction will be determined by comparing the total number of cropland acres on the farm on which the violation occurred to the total number of cropland acres on all farms in which landlord has an interest, as determined by FSA.

(ii) The farms and cropland acres used to determine the premium subsidy reduction percentage will be the farms and cropland acres of the landlord for the reinsurance year in which the tenant or sharecropper is determined ineligible.

(iii) The percentage reduction will be applied to all policies and plans of insurance of the landlord in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.

(iv) If the landlord and tenant or sharecropper are insured under the same policy, the landlord will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.

(2) A landlord will be ineligible for the premium subsidy on all policies and plans of insurance in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible if the production of an agricultural commodity on a converted wetland by the landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper and such agreement was entered into after February 7, 2014, or if the landlord has acquiesced in such activities by the tenant or sharecropper.

(3) If all the requirements in paragraph (j)(4) of this section are met, in lieu of ineligibility for Federal crop insurance premium subsidies for all policies or plans of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524) for producing or planting an agricultural commodity on a wetland converted after February 7, 2014, the premium subsidy on all policies and plans of insurance of the ineligible tenant or sharecropper will be reduced.

(i) The percentage reduction will be determined by comparing the total number of cropland acres on the farm on which the violation occurred to the total number of cropland acres on all farms in which tenant or sharecropper has an interest, as determined by FSA.

(ii) The farms and cropland acres used to determine the premium subsidy reduction percentage will be the farms and cropland acres of the tenant or sharecropper for the reinsurance year in which the tenant or sharecropper is determined ineligible.

(iii) The percentage reduction will be applied to all policies and plans of insurance of the tenant or sharecropper in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.

(iv) If the landlord and tenant or sharecropper are insured under the same policy, the tenant or sharecropper will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.

(4) The provisions of paragraph (j)(3) of this section will not apply unless all the following are met:

(i) The tenant or sharecropper shows that a good-faith effort was made to comply by developing a plan, approved by NRCS, for the restoration or mitigation of the converted wetland in a timely manner and prior to any violation;

(ii) The owner of such farm refuses to apply such a plan and prevents the tenant or sharecropper from implementing the approved plan;

(iii) FSA determines the lack of compliance is not a part of a scheme or device as described in § 12.10; and

(iv) The tenant or sharecropper actively applies the practices and measures of the approved plan that are within their control.

(k) Evaluation of certification. NRCS will evaluate the certification in a timely manner.

(1) A person who properly completes, signs, and files Form AD-1026, or successor form, with FSA certifying compliance with the provisions of this part will be eligible 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) during the period of time such certification is being evaluated by NRCS, if an evaluation is required.

(2) 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; and

(ii) The person is subsequently determined to have been in violation of the provisions of this part during the time NRCS was completing the evaluation.

(3) The relief from ineligibility provided in paragraph (k)(2) of this section:

(i) Applies only to violations that occurred prior to or during the time NRCS is completing the required evaluation;

(ii) Does not apply to any violations that occur subsequent to NRCS completing the evaluation;

(iii) Does not apply if FSA or NRCS determines the person employed, adopted, or participated in employing or adopting a scheme or device, as provided in § 12.10, to evade the provisions of this part or to become eligible for the relief provided in paragraph (k)(2) of this section; and

(iv) Does not apply if the required evaluation is delayed due to unfavorable site conditions for the evaluation of soils, hydrology, or vegetation.

(l) Failing to notify FSA of a change. Requirements to pay equitable contribution for failing to notify FSA of a change are as follows.

(1) 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 pay to NRCS an equitable contribution.

(2) The amount of equitable contribution will be determined by NRCS, but 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.

(3) A person who fails to pay the full equitable contribution amount by the due date determined by NRCS will be ineligible for Federal crop insurance premium subsidy on any policy or plan of insurance beginning with the subsequent reinsurance year. The person will be ineligible for Federal crop insurance premium subsidy for the entire reinsurance year even if full payment of the equitable contribution amount is received by NRCS during the reinsurance year.

§ 12.31 [Amended]

11. Amend § 12.31(b)(1), as follows:

a. Remove the words “in the National List of Plant Species that Occur in Wetlands” and add the words “in the National Wetland Plant List, or (as determined by NRCS) successor publication” in their place; and

b. Remove the words “may be obtained upon request from the U.S. Fish and Wildlife Service at National Wetland Inventory, Monroe Bldg. Suite 101, 9720 Executive Center Drive, St. Petersburg, Florida 33702” and add the words “may be accessed at: <http://rsgisias.crrel.usace.army.mil/NWPL/>” in their place.

§ 12.34 [Removed]

12. Remove § 12.34.

Signed on April 20, 2015.

Thomas J. Vilsack,
Secretary of Agriculture.

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