

# Conservation Compliance and U.S. Farm Policy

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## Summary

The Food Security Act of 1985 (P.L. 99-198, 1985 farm bill) included a number of significant agricultural conservation provisions designed to reduce farm production and conserve soil and water resources. Many of the provisions remain in effect today, including the two compliance provisions—highly erodible land conservation (sodbuster) and wetland conservation (swampbuster). The two provisions, collectively referred to as conservation compliance, require that in exchange for certain U.S. Department of Agriculture (USDA) program benefits, a producer agrees to maintain a minimum level of conservation on highly erodible land and not to convert wetlands to crop production.

Conservation compliance affects most USDA benefits administered by the Farm Service Agency (FSA) and the Natural Resources Conservation Service (NRCS). These benefits can include commodity support payments, disaster payments, farm loans, and conservation program payments, to name a few. If a producer is found to be in violation of conservation compliance, then a number of penalties could be enforced. These penalties range from temporary exemptions that allow the producer time to correct the violation, to a determination that the producer is ineligible for any USDA farm payment and must pay back current and prior years' benefits.

A controversial issue in the 2014 farm bill (P.L. 113-79) debate was whether federal crop insurance subsidies should be included on the list of program benefits that could be lost if a producer were found to be out of compliance with conservation requirements on highly erodible land and wetlands. Ultimately the 2014 farm bill did add federal crop insurance subsidies to the list of benefits that could be lost, but created separate considerations when addressing compliance violations and the loss of federal crop insurance premium subsidies compared with the loss of other farm program benefits. How compliance is calculated, where compliance provisions apply, and traditional exemptions and variances were not amended. The 2014 farm bill also extended limited protection for native sod in select states.

In April 2015, USDA issued an interim final rule amending conservation compliance regulations in response to changes made in the 2014 farm bill. The levels of interest and debate generated by the changes to conservation compliance in the 2014 farm bill are likely to continue with implementation, raising additional questions and oversight in Congress. Recent concerns about a growing backlog of wetland determinations in the northern plains and approaching compliance deadlines for crop insurance policyholders have been raised. Additionally, the reduction in soil erosion from highly erodible land conservation continues, but at a slower pace than following the enactment of the 1985 farm bill. The leveling off of erosion reductions leaves broad policy questions related to conservation compliance, including whether an acceptable level of soil erosion on cropland has been achieved; whether additional reductions could be achieved, and, if so, at what cost; and how federal farm policy could encourage additional reductions in erosion.

## Contents

Recent Developments: June 1 <sup>st</sup> Deadline .....	1
Conservation Compliance Today.....	1
Sodbuster.....	2
Swampbuster .....	3
Sodsaver .....	5
Affected Program Benefits.....	5
Implementation .....	7
Issues for Congress.....	8
Wetland Determinations .....	8
2014 Farm Bill Implementation .....	9
Crop Insurance .....	9
Wetland Mitigation Banking and Violations .....	10
Erosion and Conversion Rates .....	11
Oversight.....	13
Conclusion.....	14

## Figures

Figure 1. Acres of Highly Erodible Cropland.....	3
Figure 2. Soil Erosion on Cropland by Year.....	12

## Tables

Table 1. Crop Insurance Eligibility and Wetland Conversions.....	4
Table 2. USDA Benefits Affected by Conservation Compliance .....	6
Table 3. Summary of Conservation Compliance Status Reviews .....	8
Table A-1. Comparison of Conservation Compliance Provisions Enacted in the 2014 Farm bill to Prior Law .....	19
Table B-1. FSA, NRCS, and RMA Responsibilities Administering Conservation Compliance on Highly Erodible Land.....	22

## Appendixes

Appendix A. A Brief Legislative History of Conservation Compliance .....	15
Appendix B. FSA, NRCS, and RMA Responsibilities.....	22

## Contacts

Author Contact Information .....	23
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Federal policies and programs traditionally have offered voluntary incentives to producers to plan and apply resource-conserving practices on private lands. It was not until the 1980s that Congress took an alternative approach to agricultural conservation through enactment of the Food Security Act of 1985 (P.L. 99-198, 1985 farm bill). The bill's more publicized provisions—the Conservation Reserve Program (CRP),<sup>1</sup> highly erodible land conservation (sodbuster), and wetland conservation (swampbuster)<sup>2</sup>—remain significant today. The latter two “conservation compliance” provisions require that in exchange for certain U.S. Department of Agriculture (USDA) program benefits, a producer agrees to maintain a minimum level of conservation on highly erodible land and not to convert wetlands to crop production.

The Agricultural Act of 2014 (2014 farm bill, P.L. 113-79) added federal crop insurance subsidies to the list of program benefits that could be lost if a producer were found to be out of compliance with conservation requirements on highly erodible land and wetlands. Compliance violations related to the loss of federal crop insurance premium subsidies now have separate considerations from violations related to the loss of other farm program benefits. How compliance is calculated, where compliance provisions apply, and traditional exemptions and variances were not amended. The 2014 farm bill also extended limited protection for native sod in select states.

## Recent Developments: June 1<sup>st</sup> Deadline

To remain eligible for crop insurance premium subsidies, producers were required to certify their compliance with conservation compliance provisions no later than June 1, 2015. USDA conducted a number of outreach activities prior to the deadline, including direct mailings, call centers, and public radio announcements. In July 2015, USDA reported a 98.2% certification rate, suggesting that those not certified were likely no longer farming or filed forms with discrepancies that may still be reconciled.<sup>3</sup>

## Conservation Compliance Today

The 1985 farm bill included a number of significant conservation provisions designed to reduce crop production and conserve soil and water resources. The highly erodible land conservation provision (sodbuster) introduced in the 1985 farm bill was not intended to “allow the Federal government to impose demands on any farmer or rancher concerning what may be done with their land; ... only that the Federal government will no longer subsidize producers who choose to convert highly erodible land to cropland unless they also agree to install conservation system(s).”<sup>4</sup> Similarly, the wetland conservation provision introduced in the 1985 farm bill does not authorize USDA “to regulate the use of private, or non-Federal land”; rather, “the objective of this provision is to deny various Federal benefits to those producers who choose to drain wetlands for the purpose of producing agricultural commodities.”<sup>5</sup> Since the enactment of the 1985 farm bill, each succeeding farm bill has amended the compliance provisions. For a brief history of the farm

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<sup>1</sup> CRP is not discussed in depth in this report. For additional information and issues related to CRP, see CRS Report R42783, *Conservation Reserve Program (CRP): Status and Issues*.

<sup>2</sup> Highly erodible land conservation and wetland conservation are collectively referred to as conservation compliance in this report.

<sup>3</sup> USDA, “Record Number of Farmers and Ranchers Certified Under 2014 Farm Bill Conservation Compliance,” press release, July 10, 2015, <http://content.govdelivery.com/accounts/USDAO/bulletins/10e8a2c>.

<sup>4</sup> H.Rept. 99-271, p. 84.

<sup>5</sup> *Ibid.*, p. 88.

bill legislative changes to the conservation compliance provisions since the 1985 farm bill, see **Appendix A**.

## Sodbuster

The highly erodible land conservation provision, as enacted in the 1985 farm bill, introduced the concept that in exchange for certain federal farm benefits a producer must implement a minimum level of conservation. The provision, still in force today, applies the loss of benefits to land classified as highly erodible that was not in cultivation between 1980 and 1985 (i.e., newly broken land, referred to as sodbuster) and any highly erodible land in production after 1990, regardless of when the land was put into production. Land meeting this classification can be considered eligible for USDA program benefits if the land user agrees to cultivate the land using an approved conservation plan.

In addition to the application of an approved conservation plan, a number of exemptions are possible.<sup>7</sup>

- *Good faith.* If the person has acted in good faith and without the intent to violate the compliance provisions, then the producer may be granted up to one year to comply with a conservation plan.
- *Graduated penalty.* Under some circumstances, producers could be subject to a minimum of \$500 and no more than \$5,000 loss in benefits, rather than a loss of all benefits.
- *Allowable variance.* If a conservation system fails and the failure is determined to be technical and minor in nature, and to have little effect on the erosion control purposes of the conservation plan, then the producer may not be found out of compliance. Similarly, the producer may not be found out of compliance if the system failure was due to circumstances beyond the control of the producer.
- *Temporary variance.* A producer may be granted a temporary variance for practices prescribed in the conservation plan due to issues related to weather, pests, or disease. USDA has 30 days from the date of the request to issue a temporary variance determination; otherwise the variance is considered granted.
- *Economic hardship.* A local Farm Service Agency (FSA) county committee, with concurrence from the state or district FSA director and technical concurrence from the Natural Resources Conservation Service (NRCS), is allowed to permit

### What Is “Highly Erodible”?

For land to be considered highly erodible (as defined under 16 U.S.C. 3801) it must be—

- land that currently has, or if put into agricultural production would have, an excessive average annual rate of erosion in relation to the soil loss tolerance level (see “The ‘T’ Factor” text box, below); or
- cropland that is classified as class IV, VI, VII, or VIII land under the land capability classification system in effect on December 23, 1985.

The land capability classification system is an interpretive grouping on soil maps made primarily for agricultural purposes. Capability “classes” are broad categories of soils with similar hazards or limitations. There are eight classes, with soil damage and limitations on use becoming progressively greater from class I to class VIII.<sup>6</sup>

NRCS classifies about 97.7 million acres of U.S. cropland as highly erodible, approximately 27% of total cropland (see **Figure 1**).

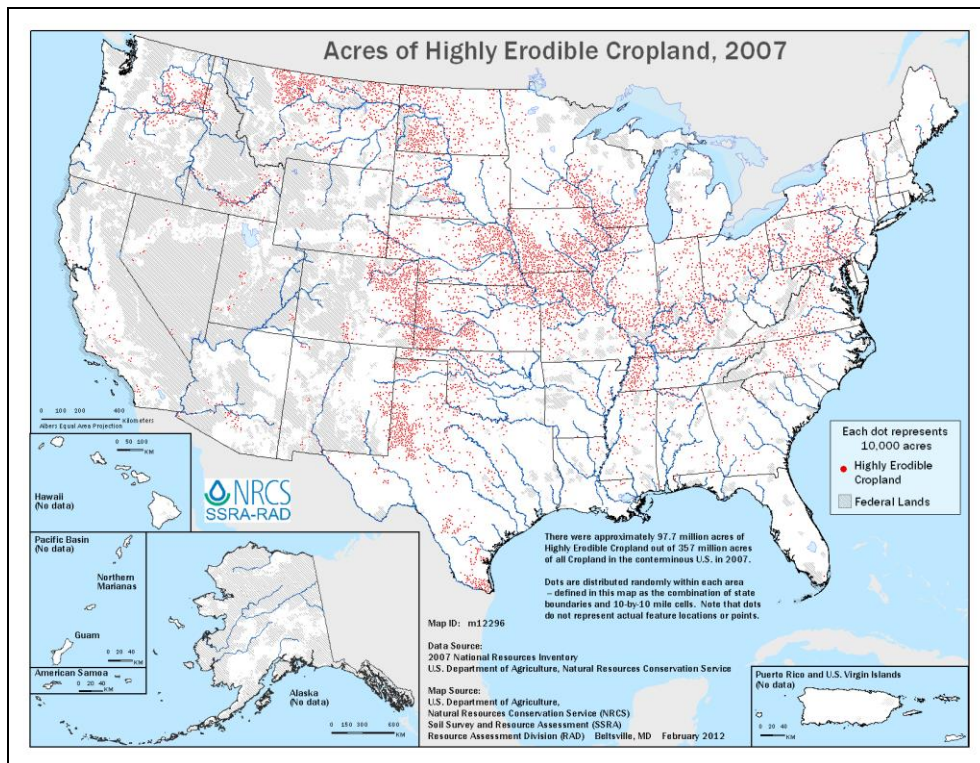
<sup>6</sup> USDA, Soil Conservation Service, *Land Capability Classifications System*, Agricultural Handbook 210, Washington, DC, 1961, [ftp://ftp-fc.sc.egov.usda.gov/NSSC/LCC/handbook\\_210.pdf](ftp://ftp-fc.sc.egov.usda.gov/NSSC/LCC/handbook_210.pdf).

<sup>7</sup> In addition to those listed, a producer who participated in a USDA program that set aside land for the purpose of reducing production of an agricultural commodity, may also not be considered ineligible. Many of these “set-aside” programs are no longer utilized.

relief if it is determined that a conservation system causes a producer undue economic hardship.

- *Federal crop insurance premium subsidies.* Producers new to compliance requirements (after enactment of the 2014 farm bill on February 7, 2014) have five reinsurance years<sup>8</sup> to develop and comply with a conservation plan. Producers with compliance violations prior to February 7, 2014, are allowed two reinsurance years to develop and comply with a conservation plan before the loss of the crop insurance premium subsidies.

**Figure 1. Acres of Highly Erodible Cropland**  
(2007 Natural Resources Inventory)



**Source:** USDA, NRCS, *Acres of Highly Erodible Cropland, 2007*, Natural Resources Inventory, Beltsville, MD, February 2012.

**Notes:** This map only identifies broad spatial trends and should not be used to determine site-specific information. Data are not collected on federal land. In some cases, overlaying dots may completely cover up underlying dots. Data are not available for Alaska, Hawaii, Puerto Rico, or the Pacific Basin.

## Swampbuster

The “swampbuster” or wetland conservation provision extends the sodbuster concept to wetland areas. Producers who plant a program crop on a wetland converted after December 23, 1985, or who convert wetlands, making agricultural commodity production possible, after November 28, 1990, are ineligible for certain USDA program benefits. This means that, for a producer to be

<sup>8</sup> A reinsurance year is a 12-month period that begins on July 1.



found out of compliance, crop production does not actually have to occur; production only needs to be made possible through activities such as draining, dredging, filling, or leveling the wetland.

Similar to sodbuster, the 2014 farm bill amends the wetlands conservation provision to include crop insurance premium subsidies as an ineligible benefit if found to be out of compliance. The amendment treats the time of wetland conversion differently (**Table 1**). The amendment also extends the list of exemptions for compliance violators, allowing additional time (one or two reinsurance years) for producers to remedy or mitigate the wetland conversion before losing crop insurance premium subsidies.

**Table 1. Crop Insurance Eligibility and Wetland Conversions**

(amendment in the 2014 farm bill)

Timing	Violation	Penalty
<b>Newly Converted Wetlands</b> —wetlands converted after February 7, 2014.	Converted wetland violation impacting five or more acres.	Ineligible for crop insurance premium subsidies, unless exemption applies or required mitigation actions are taken.
	Converted wetland violation impacting less than five acres.	Ineligible for crop insurance premium subsidies, unless the landowner pays 150% of the cost of mitigation to a wetland restoration fund or conducts the required mitigation actions.
<b>Prior Converted Wetlands</b> —wetlands converted before February 7, 2014.	Any converted wetland violation.	Eligible for crop insurance premium subsidies. Ineligible for other USDA program benefits, unless exemption applies or required mitigation actions are taken.
<b>New Insurance Policies</b> —wetlands converted after February 7, 2014, but before a new insurance policy or plan is made available for the first time.	Any converted wetland violation.	Ineligible for crop insurance premium subsidies, if prior conversions are not mitigated within two reinsurance years.

**Source:** 16 U.S.C. 3821(c)(2).

**Notes:** Table only applies to federal crop insurance premium subsidies. All other existing wetland compliance violations were unaffected by the 2014 farm bill provision.

Under the wetlands compliance provision, the following lands are considered exempt:

- a wetland converted to cropland before enactment (December 23, 1985);
- artificially created lakes, ponds, or wetlands;
- wetlands created by irrigation delivery systems;
- wetlands on which agricultural production is naturally possible;
- wetlands that are temporarily or incidentally created as a result of adjacent development activities;
- wetlands converted to cropland before December 23, 1985, that have reverted back to a wetland as the result of a lack of drainage, lack of management, or circumstances beyond the control of the landowner;
- wetlands converted if the effect of such action is minimal; and
- authorized wetlands converted through a permit issued under Section 404 of the Federal Water Pollution Control Act (Clean Water Act, 33 U.S.C. 1344), for which wetland values, acreage, and functions of the converted wetland were adequately mitigated.

### Wetlands Mitigation

Under wetlands conservation, compliance violators have the option of mitigating the violation through the restoration of a converted wetland, the enhancement of an existing wetland, or the creation of a new wetland.<sup>9</sup> Debate over these wetland mitigation requirements arose during the 2014 farm bill and centered on the concern that some producers were required to mitigate wetlands with a greater than 1-to-1 acreage ratio (i.e., more than one acre of mitigated wetland is required to replace one acre of wetland lost). This is allowed by statute if “more acreage is needed to provide equivalent functions and values that will be lost as a result of the wetland conversion to be mitigated.” The provisions remained unchanged in the 2014 farm bill. The conference report (H.Rept. 113-333), however, included language encouraging USDA to use a wetland mitigation ratio not to exceed 1-to-1 acreage.

The 2014 farm bill also provided \$10 million in mandatory funding for mitigation banking efforts. Based on the 2015 interim final rule published in the *Federal Register* on April 24, 2015, USDA will implement a “prioritized and competitive mitigation banking program through an Announcement of Program Funding that focuses on agricultural wetlands.”<sup>10</sup> To date, no announcement of funding has been made.

### Sodsaver

The 2014 farm bill amended and expanded the “sodsaver” provision, which reduces benefits for crops planted on native sod. The provision applies only to native sod acres in Minnesota, Iowa, North Dakota, South Dakota, Montana, and Nebraska.<sup>11</sup> If a producer chooses to plant an insurable crop on native sod, then crop insurance premium subsidies are reduced by 50 percentage points during the first four years of planting.<sup>12</sup> Crops planted on native sod also will have higher fees under the noninsured crop disaster assistance program (NAP)<sup>13</sup> and reduced yield guarantees.<sup>14</sup> This provision is expected to reduce the federal incentive to produce on native sod.

### Affected Program Benefits

As it exists today, conservation compliance applies to most farm program payments, loans, or other benefits administered by FSA and NRCS. **Table 2** includes the statutory description and examples of specific USDA program benefits that are affected if a producer is found to be out of compliance with the highly erodible land and wetland conservation provisions.

<sup>9</sup> 16 U.S.C. 3822(f).

<sup>10</sup> USDA Office of the Secretary, “Conservation Compliance,” 80 *Federal Register* 22873-22885, April 24, 2015.

<sup>11</sup> Section 11014 of the crop insurance title (title XI). Sodsaver was originally authorized in the 2008 farm bill and only applied to the Prairie Pothole National Priority Area. The provision was never activated and is discussed further in **Appendix A**.

<sup>12</sup> In 2013, an average of 62% of the total crop insurance premium was paid for by the federal government, and the remainder by the participating farmer. Therefore, a 50 percentage point reduction would lower a premium subsidy rate of 62% to 12%.

<sup>13</sup> For additional information on crop insurance and NAP, see CRS Report R40532, *Federal Crop Insurance: Background*, CRS Report RS21212, *Agricultural Disaster Assistance*, or CRS Report R43494, *Crop Insurance Provisions in the 2014 Farm Bill* (P.L. 113-79).

<sup>14</sup> The yield guarantee for a crop insurance policy is a producer’s “normal” crop yield based on actual production history (APH). In the absence of actual yield data (e.g., production on native sod or no yield documentation on existing fields), a “transition yield” (T-yield) is assigned, which is based on a portion of 10-year average county yields for the crop. The 2014 farm bill sets the T-yield factor on native sod equal to 65% of the 10-year average county yield for production on native sod. For other cropland, the percentage can be higher depending on the number of years of actual data included in the APH. Also, “yield substitution” is not allowed; that is, low farm yields must be used in the APH rather than replacing them with potentially higher T-yields as allowed for other cropland.



**Table 2. USDA Benefits Affected by Conservation Compliance**

Statutory Description	Examples of Benefits
Contract payments under a production flexibility contract, marketing assistance loans, and any type of price support or payment made available under the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act.	Price Loss Coverage (PLC) payments, Agriculture Risk Coverage (ARC) payments, Margin Protection Program (MPP), and Marketing Assistance Loans
A farm storage facility loan made under Section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h)). <sup>a</sup>	Farm Storage Facility Loan
Disaster payments <sup>a</sup>	Noninsured Crop Disaster Assistance program (NAP), ad hoc disaster assistance programs, Emergency Forest Restoration Program (EFRP), Emergency Assistance for Livestock, Honey Bees, and Farm-raised Fish (ELAP), Livestock Forage Program (LFP), Livestock Indemnity Program (LIP), and Tree Assistance Program (TAP)
A farm credit program loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act or any other provision of law administered by FSA. <sup>b</sup>	FSA Farm Operating Loans, Farm Ownership Loans, and Emergency Disaster Loans
Any portion of the premium paid by the Federal Crop Insurance Corporation Act (7 U.S.C. 1501 et seq.)	Federal crop insurance premium subsidies <sup>c</sup>
A payment made pursuant to a contract entered into under the Environmental Quality Incentives Program (EQIP) or any other provision of Subtitle D of the Food Security Act of 1985, as amended	Agricultural Conservation Easement Program (ACEP), Conservation Stewardship Program (CSP), Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP), and Regional Conservation Partnership Program (RCPP).
A payment made under Section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 or 2202).	Emergency Conservation Program (ECP) and Emergency Watershed Protection (EWP) Program
A payment, loan, or other assistance under Section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 or 1006a).	Watershed Protection and Flood Prevention program

**Source:** 16 U.S.C. 3811 and 16 U.S.C. 3812.

**Notes:** The examples listed should not be considered an exhaustive list. Also affected would be any payments made under Section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity acquired by the CCC.

- a. Applies only to highly erodible land conservation provisions.
- b. Only applies if the proceeds of the loan will be used for a purpose that contributes to the conversion of wetlands that would make production of an agricultural commodity possible or for a purpose that contributes to excessive erosion of highly erodible land. Loans made before enactment of the 1985 farm bill are not affected.
- c. Does not apply retroactively. Only applies to reinsurance years following final determination and after all administrative appeals.

If a producer requests any payment, loan, or other benefit subject to the conservation compliance provision, then the provision applies to all land owned by the producer or the producer's affiliates. This includes land located anywhere in the United States or U.S. territories, without regard to whether payments, loans, or other benefits are actually received for such land. In other

words, if producers are found out of compliance on one portion of their land, they are deemed out of compliance for all land owned or associated with them, regardless of where it is located.<sup>15</sup>

## Implementation

Both NRCS and FSA implement conservation compliance as part of USDA farm programs. FSA has primary responsibility for making producer eligibility determinations about conservation compliance. NRCS has primary responsibility for technical determinations associated with conservation compliance. Each agency's role is outlined in **Appendix B**.

Following the 1985 farm bill, conservation compliance requirements created a large workload for NRCS staff. Compliance required that new conservation plans be completed by 1990 on the approximately 140 million acres classified as highly erodible. In contrast, in 1984, the year before compliance was enacted, NRCS assisted with plans on about 2.5 million acres. Demands remained high ahead of the 1995 deadline for full implementation. Almost half of these plans were revised at least once before the 1995 deadline because of changes in farming techniques and crops, new conservation technology, and changes in ownership and tenancy.

Another dynamic of implementing compliance was the requirement for NRCS to work with a large number of new, and sometimes less cooperative, clients. Most producers receiving farm program benefits were familiar with FSA because the agency was already administering many federal farm programs. However, prior to 1985, conservation programs administered by NRCS were small and voluntary. Because conservation compliance tied federal farm program benefits to the requirement for a conservation plan, some producers viewed compliance as coercive. This perspective made implementation more difficult, and caused many in the agricultural community to view NRCS as a regulatory agency. This resulted in several congressional oversight hearings to explore implementation of compliance following enactment.

NRCS continues to conduct compliance status reviews on farm and ranch lands that have received USDA benefits and which are subject to the conservation compliance provisions (highly erodible land, wetland compliance, or both). A compliance status review is an inspection of a cropland tract to determine whether the USDA farm program beneficiary is in compliance with the conservation compliance provisions (**Table 3**). The review process requires an NRCS employee to make an on-site determination when a violation is suspected, and ensures that only qualified NRCS employees report violations. Ultimately, penalties for noncompliance are determined by FSA. Penalties may range from a good faith exemption that allows producers up to one year to correct the violation, to a determination that the producer is ineligible for any government payment and must pay back current and prior years' benefits.

The Risk Management Agency (RMA) at USDA administers the federal crop insurance program and has limited responsibilities with conservation compliance implementation. RMA and associated approved insurance providers<sup>16</sup> are prohibited from making any eligibility

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<sup>15</sup> One exception to this was created in the 2014 farm bill. If a tenant is considered ineligible for benefits under conservation compliance and USDA determines that the tenant has made a good faith effort to comply with restoration or mitigation requirements and the landowner continues to refuse to comply, then the denial of benefits may be limited to the farm that is the basis of the ineligibility. The 2015 rule clarified that because federal crop insurance policies are not constructed on a "farm" basis, tenant relief provisions will be achieved through a prorated reduction of premium subsidies on all of a person's policies and plans of insurance. Similarly, a landlord's premium subsidy on all policies and plans of insurance will be prorated in the same manner when a landlord is in violation because of the actions (or inactions) of their tenant or sharecropper (7 CFR 12.9).

<sup>16</sup> Insurance policies for the federal crop insurance program are sold and completely serviced through 18 approved private insurance companies known as approved insurance providers. For additional information on how federal crop (continued...)

determinations regarding conservation compliance.<sup>17</sup> Implementation duties are limited to providing approved insurance agents with compliance-related records and notifying FSA and NRCS of cases of misrepresentation, fraud, or schemes and devices where appropriate.

**Table 3. Summary of Conservation Compliance Status Reviews**

	2009	2010	2011	2012	2013
Total Tracts Reviewed	20,474	18,704	22,210	24,309	23,677
Total Acres Reviewed (approx.)	3 million	3.3 million	2.8 million	3.6 million	3.6 million
Tracts Out of Compliance	277	344	530	744	680
Both Highly Erodible Land and Wetland Conservation Violations	177	167	372	401	464
Wetland Conservation Violation Only	100	177	158	343	216
Percentage Out of Compliance	1.4%	1.8%	2.4%	3.1%	2.9%
Number of States Recording Non-Compliance	30	28	32	30	34
Variances or Exemptions Issued	726	732	887	1,081	1,354

**Source:** USDA, NRCS, compiled by CRS.

## Issues for Congress

The 1985 farm bill created the highly erodible land conservation and wetland conservation compliance provisions, which tied various farm program benefits to conservation standards. These provisions have been amended with each subsequent farm bill, including the most recent 2014 farm bill. As the 114<sup>th</sup> Congress continues to review the implementation of farm programs, issues related to conservation compliance could be debated.

## Wetland Determinations

Beginning in the 2000s, weather events and expanded production in the northern plains states resulted in an increased number of wetland determination requests from producers in order to remain in compliance with wetland conservation provisions. NRCS has sole responsibility for making wetland determinations, and the growing number of requests has resulted in a backlog.

This backlog has continued to grow in recent years with over 4,000 pending wetland determinations in the Prairie Pothole region,<sup>18</sup> including 2,000 requests in South Dakota alone. According to recent testimony, NRCS continues to chip away at the backlog by redirecting staff and resources to the Prairie Pothole region states with a goal of eliminating the backlog within

(...continued)

insurances is administered, see CRS Report R40532, *Federal Crop Insurance: Background*.

<sup>17</sup> 16 U.S.C. 3821(c)(4)(C).

<sup>18</sup> Prairie potholes are depressional wetlands that fill with snowmelt and rain in the spring. Some of these wetlands are temporary, and some are permanent. Most of the prairie potholes are located in portions of Montana, North Dakota, South Dakota, Minnesota, and Iowa and make up the Prairie Pothole National Priority Area. The northern plains location of these wetlands is ideal habitat for migratory waterfowl and provides natural flood control for snow melt and spring rains.

three years.<sup>19</sup> Budget restrictions are cited as the primary obstacle for reducing the backlog sooner.<sup>20</sup>

In November 2014, NRCS proposed changes to the offsite methods used to make wetlands determination in Iowa, Minnesota, North Dakota, and South Dakota.<sup>21</sup> The proposal would allow the four Prairie Pothole states to make wetland determinations based primarily on the use of aerial photography, rather than on-site visits. The proposal was met with opposition from a number of wildlife and conservation organizations that expressed concern that the off-site methods may not accurately account for seasonal and temporary wetlands, and that additional analysis should be conducted to ensure the determination methods are at least as accurate as the previous methods.<sup>22</sup> In response, NRCS officials say the new process will be faster, cheaper, more accurate, and more consistent across the four states.<sup>23</sup>

## 2014 Farm Bill Implementation

On April 24, 2015, USDA published an interim final rule (2015 rule) amending conservation compliance regulations in accordance with changes made in the 2014 farm bill.<sup>24</sup> The rule made three main amendments: (1) applied conservation compliance provisions to federal crop insurance premium subsidies, (2) modified easement provisions related to wetland mitigation banks, and (3) amended provisions related to agency discretion for certain violations. The level of interest and debate generated by the changes to conservation compliance in the 2014 farm bill is likely to continue as USDA proceeds with implementation.

### Crop Insurance

The majority of changes made by the 2015 rule are in response to the 2014 farm bill's addition of federal crop insurance subsidies to the list of program benefits that could be lost if a producer were found to be out of compliance with conservation requirements on highly erodible land and wetlands. The changes and deadlines for compliance are correlated to the changes made in the 2014 farm bill and described in **Table A-1**. How compliance is calculated, where compliance provisions apply, and traditional exemptions and variances were not amended by the rule. Producers must continue to self-certify their compliance with the sodbuster and swampbuster provisions, and approved conservation plans currently in place will remain valid.

Changes in the 2014 farm bill are not expected to have a significant impact on USDA's implementation of conservation compliance.<sup>25</sup> Crop insurance participants new to compliance

<sup>19</sup> U.S. Congress, Senate Committee on Agriculture, Nutrition, and Forestry, *Farmers and Fresh Water: Voluntary Conservation to Protect Our Land and Waters*, testimony of Jason Weller, Chief of the NRCS, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 3, 2014.

<sup>20</sup> U.S. Congress, Senate Committee on Agriculture, Nutrition, and Forestry, *The Agricultural Act of 2014 Implementation After One Year*, testimony of Tom Vilsack, Secretary of USDA, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 24, 2015.

<sup>21</sup> USDA, Natural Resources Conservation Service, "Notice of Proposed Changes to Section I of the Iowa, Minnesota, North Dakota, and South Dakota State Technical Guides," 79 *Federal Register* 65615, November 5, 2014.

<sup>22</sup> Letter from 29-90 Sportsmen's Club, Association of Fish and Wildlife Agencies, and Friends of the Big Sioux, et al. to Jason Weller, Chief of the Natural Resources Conservation Service, February 3, 2015, <http://www.regulations.gov/#!documentDetail;D=NRCS-2014-0013-0084>.

<sup>23</sup> Whitney Forman-Cook, "Mapping Changes Could Put Wetlands at Risk, USDA told," *AgriPulse*, February 6, 2015.

<sup>24</sup> USDA Office of the Secretary, "Conservation Compliance," 80 *Federal Register* 22873-22885, April 24, 2015.

<sup>25</sup> Amendments in the 2014 farm bill require USDA to, "coordinate the certification process so as to avoid duplication or unnecessary paperwork (16 U.S.C. 3812a(d)(4))" and to "use existing processes and procedures for certifying (continued...)"

requirements could create an increase in demand for conservation plans, but not near the levels seen in the 1980s and 1990s.<sup>26</sup>

The first deadline following the 2014 farm bill was on June 1, 2015.<sup>27</sup> To remain eligible for crop insurance premium subsidies, producers are required to certify their compliance with sodbuster and swampbuster provisions using a form known as an AD-1026. USDA conducted a number of outreach activities to notify producers who were enrolled in the crop insurance program but did not have a current AD-1026 compliance form on file with FSA.<sup>28</sup> Examples of additional outreach efforts by USDA include letters, postcards, radio broadcasts, direct telephone calls, town hall meetings, and stakeholder coordination. The department used the month of June to reconcile data prior to the start of the reinsurance year, which begins July 1. In July 2015, USDA reported a 98.2% certification rate, suggesting that those not certified were likely no longer farming or filed forms with discrepancies that may still be reconciled.<sup>29</sup> According to USDA, the June 1 deadline is firm; however, some flexibility is available for producers experiencing extenuating circumstances or newly insured.

## Wetland Mitigation Banking and Violations

Under wetlands conservation, compliance violators have the option of mitigating the violation through the restoration of a converted wetland, the enhancement of an existing wetland, or the creation of a new wetland. The 2015 rule amends regulations related to wetland mitigation banking and defining wetland conservation violations.

Wetland mitigation banking is a type of wetlands mitigation whereby a wetland is created, enhanced, or restored, and “credit” for those efforts is sold to others as compensation for the loss of impacted wetlands elsewhere. While wetland mitigation banks are not new, challenges related to access and cost have prevented agricultural producers from utilizing this option for mitigation. The 2014 farm bill changes the wetland mitigation banking provision to allow for third parties to hold wetland mitigation easements, rather than USDA itself. The 2014 farm bill also created a permanent wetland mitigation banking program and provided \$10 million in mandatory funding. USDA is expected to implement the program through an announcement of funding at a later date.

Other changes in the 2015 rule were not directed by the 2014 farm bill, including a clarification regarding wetland conservation violations. According to the rule, there are two types of wetland conservation violations with two different consequences. The first type is violations for *production on converted wetland*, which can result in a graduated penalty determined by USDA, rather than a denial of all benefits.<sup>30</sup> The second type is a *conversion of wetland to production*,

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(...continued)

compliance (16 U.S.C. 3821(c)(4)).”

<sup>26</sup> Producers new to conservation compliance would also receive priority when requesting technical assistance from USDA (16 U.S.C. 3841(c)(2)).

<sup>27</sup> USDA - Federal Crop Insurance Corporation, “General Administrative Regulations; Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions,” 79 *Federal Register* 37155-37166, July 1, 2014.

<sup>28</sup> U.S. Congress, House Committee on Agriculture, Subcommittee on General Farm Commodities and Risk Management, *Farm Bill*, Implementing the Agricultural Act of 2014: Commodity Policy and Crop Insurance, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., March 26, 2015.

<sup>29</sup> USDA, “Record Number of Farmers and Ranchers Certified Under 2014 Farm Bill Conservation Compliance,” press release, July 10, 2015, <http://content.govdelivery.com/accounts/USDAO/bulletins/10e8a2c>.

<sup>30</sup> 16 U.S.C. 3821(a)(2).

which can result in a denial of all benefits.<sup>31</sup> According to USDA, previous language was used by producers who *converted a wetland* to argue that USDA has discretion to issue a graduated penalty similar to that of *production on converted wetlands* rather than a full denial of benefits. It is unclear what level of confusion existed prior to this change and what impact, if any, this clarification will have on determining wetland compliance violations and associated appeals in the future.

## Erosion and Conversion Rates

The reduction in soil erosion from highly erodible land conservation continues, but at a slower pace than following enactment of the 1985 farm bill (**Figure 2**). The leveling off of reduced erosion leaves several broad policy questions, including whether an acceptable level of soil erosion on cropland has been achieved; whether additional reductions could be achieved, and if so, at what cost; and how federal farm policy should encourage additional reductions in erosion. Some environmental and conservation groups have asked Congress to tighten compliance requirements as one way of reducing soil erosion. Many agricultural groups, however, prefer additional financial incentives through voluntary conservation programs, such as EQIP.

According to USDA's Natural Resource Inventory, in 2010, 94 million acres (26% of all cropland) was eroding above soil loss tolerance (T) rates (see text box).<sup>32</sup> This compares to 169 million acres (40% of cropland) in 1982. Between 1982 and 2010, farmers reduced total cropland soil erosion by 41% (**Figure 2**). The bulk of this reduction occurred following the 1985 farm bill and the implementation of CRP and conservation compliance requirements. Reduction in soil erosion may also be attributed to other factors. Estimates indicate that compliance provisions could be responsible for approximately 295 million tons, or 25% of the 1.2 billion ton reduction in cropland soil erosion that occurred between 1982 and 1997 (most recent information available).<sup>33</sup> Another 31%, or 365 million tons, reduced could be attributed to land use changes, including CRP enrollment.<sup>34</sup>

### The "T" Factor

Soil erosion occurs for a variety of natural and manmade reasons. An evaluation of different soil types and surrounding conditions (e.g., soil depth, slope, etc.) allows soil scientists to determine what an "acceptable" rate of soil erosion is for a given area. This is commonly referred to as "T" or soil loss tolerance rate. T is the maximum rate of annual soil loss that will permit crop productivity to be sustained economically and indefinitely on a given soil. Erosion is considered to be greater than T if either the water (sheet and rill) erosion or the wind erosion rate exceeds the soil loss tolerance rate. The higher the T value, the more soil erosion can be tolerated.

The use of T is one of the bases for identifying highly erodible land associated with conservation compliance. The erodibility index for a soil is determined by dividing the potential average annual rate of erosion for each soil by its predetermined soil loss tolerance (T) value.<sup>1</sup> T is also used as one of the criteria for planning soil conservation systems required by conservation compliance. Conservationists focus on reducing soil loss to or below T by applying practices, such as terraces, contour strips, grassed waterways, and residue management.

The use of T has been and will likely remain controversial. Some soil scientists have suggested that the current values of T far exceed the actual soil formation rates and therefore are not truly "sustainable" (Craig Cox, Andrew Hug, and Nils Bruzelius, *Losing Ground*, Environmental Working Group, April 2011). Despite these concerns, T remains the only commonly used standard by which soil erosion is measured.

<sup>31</sup> 16 U.S.C. 3821(d).

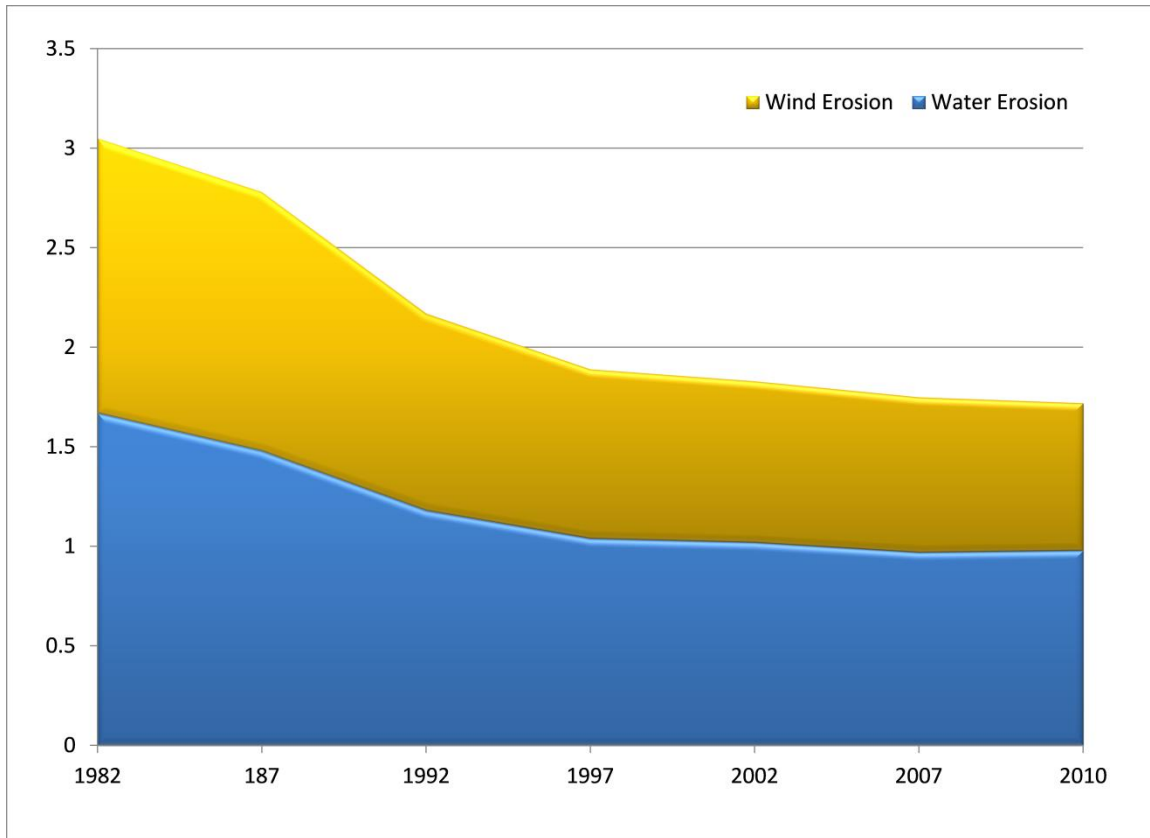
<sup>32</sup> USDA, NRCS, *Summary Report: 2010 National Resources Inventory*, September 2013, [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1167354.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1167354.pdf)

<sup>33</sup> Roger Claassen, "Have Conservation Compliance Incentives Reduced Soil Erosion?" USDA, ERS, *Amber Waves*, June 2004, <http://www.ers.usda.gov/AmberWaves/June04/Features/HaveConservation.htm>.

<sup>34</sup> Ibid. The 2014 farm bill reduced the acreage enrollment in CRP from an authorized level of 32 million acres (continued...)



**Figure 2. Soil Erosion on Cropland by Year**  
(billions of tons)



**Source:** USDA, NRCS, *Summary Report: 2010 National Resources Inventory*, September 2013, [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1167354.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1167354.pdf).

**Notes:** Total includes cultivated and non-cultivated cropland. Water erosion includes sheet and rill erosion.

In addition to soil erosion reductions following the 1985 farm bill, the number of wetlands converted to cropland was also reduced. Unlike the highly erodible land conservation provision, the impact of the wetland conservation provision is increasingly difficult to measure.

Swampbuster is one of several federal, state, and local policies that discourage the conversion of wetlands to other uses.<sup>35</sup> Other farm bill programs, such as Wetland Reserve Easements in the Agricultural Conservation Easement Program (ACEP) and CRP, seek to provide a reverse effect and encourage landowners to restore wetlands. Between 1997 and 2007, USDA estimates that the United States experienced a net wetlands gain of about 250,000 acres.<sup>36</sup> Sixty percent of the gross loss (440,000 acres) during that time period is attributed to urban and industrial development and 15% is attributed to agriculture.

(...continued)

declining to 24 million by FY2018. This could have a potential impact on soil erosion, the magnitude of which is unclear.

<sup>35</sup> The other major federal policy is Section 404 of the Clean Water Act. For additional information, see CRS Report RL33483, *Wetlands: An Overview of Issues*.

<sup>36</sup> USDA, *RCA Appraisal: Soil and Water Resources Conservation Act*, Washington, DC, July 2011, [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1044939.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1044939.pdf).

## Oversight

The conservation compliance requirements have undergone several program audits by both the Government Accountability Office (GAO) and USDA's Office of the Inspector General (OIG). The most recent GAO audit was in 2003,<sup>37</sup> which found that many NRCS field offices were not implementing compliance requirements as outlined in the law and issued through agency policy. Reasons for the discrepancy related to a lack of resources, training, and guidance; de-emphasis on compliance relative to other work; and a reluctance to assume an enforcement role. The report noted the lack of NRCS oversight and called into question the accuracy of agency's claims that 98% of tracts reviewed were found to be in compliance. The report also faulted FSA for granting waivers with inadequate documentation. Between 1993 and 2001, FSA waived 4,948 of 8,118 cases (61%) in which farmers were cited with violations. These waivers were granted by local FSA county committees, which generally consist of farmers elected by other farmers in the county. The report stated that NRCS staff and conservation groups believed that the county committees were predisposed to approve farmers' appeals so as not to penalize a neighbor's eligibility for farm program benefits.

In 2008, OIG issued phase I of a two-phase investigation.<sup>38</sup> Phase I evaluated changes to the status review process based on prior audit recommendations made by GAO and OIG. According to the report, NRCS addressed concerns from the previous GAO and OIG investigations by implementing improvements on the sampling methodology and the process by which conservation compliance status review results are summarized, analyzed, and reported. The report found that between 2002 and 2006, the average rate of compliance reported by NRCS was 98%.<sup>39</sup> Between 1993 and 2005, a total of \$125 million in program benefits was subject to withholding due to compliance violations. Of this total, FSA issued good faith exemptions and restored \$103 million (83%) in program benefits. The OIG report concluded that the number of compliance violations reported by NRCS was too low and the number of restored benefits issued by FSA was too high. Phase II is intended to evaluate the effectiveness of the status review process through field inspections and possibly provide an explanation for the high rate of reinstated benefits. To date, no report or status on phase II has been released.

The 2008 farm bill (Section 2002) amended the compliance provisions to include a second level of review for waivers granted by FSA. The conference report cited the changes as "resolv[ing] a long-standing problem and provid[ing] for increased oversight of the violation process."<sup>40</sup> Opinions vary on how well USDA is enforcing the conservation compliance provisions. Environmental organizations advocate for more consistent and rigorous status reviews. Producer organizations advocate for continued flexibility and more additional voluntary programs incentives to support any necessary improvements.

<sup>37</sup> U.S. GAO, *Agricultural Conservation: USDA needs to better ensure protection of highly erodible cropland and wetlands*, GAO-03-418, April 2003, <http://www.gao.gov/assets/240/237878.pdf>.

<sup>38</sup> USDA, Office of the Inspector General, *Audit Report: Natural Resources Conservation Service Status Review Process*, Report No. 50601-13-KC, Great Plains Region, June 2008.

<sup>39</sup> Specifically on average, 58% were found to be in compliance, 37% required no conservation plan because no highly erodible land was present or if wetlands were present there was no violation found, 3% were found to be out of compliance but granted variances (e.g., weather, pest, disease exemptions), and 2% were found to be out of compliance.

<sup>40</sup> H.Rept. 110-627.

## **Conclusion**

Since its introduction in the 1985 farm bill, conservation compliance has remained a controversial issue. Most producers prefer voluntary financial incentive programs such as EQIP, to policies such as conservation compliance, which discourages the degradation of private lands by restricting access to other federal benefits. With continued fiscal challenges, increasing or maintaining funding levels for financial incentive programs could be difficult. Conservation compliance, on the other hand, does not increase federal spending but continues to be unpopular among many producer groups. The compliance requirements have also made significant contributions to reducing soil erosion and maintaining wetlands since the 1980s. These environmental gains appear to be leveling off, however, and raise questions about conservation compliance's ability to further conservation goals. Similar to previous farm bills, the changes to conservation compliance in the 2014 farm bill debate were controversial. As Congress evaluates the implementation of the 2014 farm bill, conservation compliance might continue to generate interest.

## Appendix A. A Brief Legislative History of Conservation Compliance

Prior to the 1985 farm bill, approximately two dozen soil and water conservation programs existed. These programs reflected a pattern that was established in the 1930s—voluntary cooperation from land users and incentive-based programs—and changed little in 50 years. The expansion of agricultural production in the 1970s to respond to growing world demand for farm products was accompanied by an increase in soil erosion.<sup>41</sup> Much of this erosion was attributed to producers expanding their acreage into “marginal” land—land that easily erodes and is often less productive. Intense production practices were supported by many of the federal farm policies in place at the time.

In 1977, Congress enacted the Soil and Water Resources Conservation Act (P.L. 95-192, referred to as the RCA). The RCA required USDA to appraise the nation’s natural resources on nonfederal land and provide Congress with an annual evaluation report. Many of the soil and water resource issues were highlighted in the 1980 RCA report and drew attention to the high societal cost of soil erosion and wetland conservation that resulted from intense production.<sup>42</sup> As part of the National Program for Soil and Water Conservation, USDA presented the alternative of “cross-compliance,” in which farmers who receive USDA benefits would be required to meet minimum conservation standards.<sup>43</sup>

In the early 1980s, large-scale commodity surpluses of certain agricultural products developed from weak global demand and advances in agricultural productivity. In response, during the 1985 farm bill debate, Congress sought new farm policies to increase export markets and reduce domestic production, thereby reducing surpluses. The result was what some classified as a radical departure from the traditional conservation approach.

### 1985 Farm Bill

The Food Security Act of 1985 (P.L. 99-198, 1985 farm bill) included a number of significant conservation provisions designed to reduce production and conserve soil and water resources. The Conservation Reserve Program (CRP), as authorized in the 1985 farm bill, was allowed to remove up to 45 million acres of land from production under multi-year rental agreements. The financial incentives of CRP far exceeded those of most early conservation programs, and CRP remains the largest conservation program (in terms of funding) to date.<sup>44</sup> The other conservation provisions were highly erodible land conservation (sodbuster) and wetland conservation

<sup>41</sup> J. Douglas Helms, *Leveraging Farm Policy for Conservation: Passage of the 1985 Farm Bill*, USDA, Natural Resources Conservation Service, Historical Insights Number 6, June 2006, [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1044129.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1044129.pdf).

<sup>42</sup> U.S. Department of Agriculture, *Summary of Appraisal, Parts I and II, and Program Report*, GPO 1980 633-769/460, 1980.

<sup>43</sup> U.S. Department of Agriculture, *A National Program for Soil and Water Conservation*, 1982 Final Program Report and Environmental Impact Statement, GPO 1982-0-522-010/3711, September 1982.

<sup>44</sup> CRP is currently authorized to enroll up to 32 million acres and annually spends an average of over \$2 billion in mandatory funding. The purpose of CRP has long been debated. In its early years, some believed the program’s sole purpose was for production control. Others saw CRP as a soil erosion control program. Today, many view it as a wildlife habitat program. The program’s objectives and purpose are not debated in this report. For additional information and issues related to CRP reauthorization, see CRS Report R42093, *Agricultural Conservation and the Next Farm Bill*.

(swampbuster). Despite the historic significance of these provisions there was surprisingly little debate recorded at the time.

## **Sodbuster**

The highly erodible land conservation provision, as enacted in the 1985 farm bill, introduced the requirement that in exchange for certain federal farm benefits a producer must implement a minimum level of conservation. The provision applies the loss of benefits to land classified as highly erodible that was not in cultivation between 1980 and 1985 (i.e., newly broken land, referred to as sodbuster) and any highly erodible land in production after 1990, regardless of when the land was put into production. Land meeting this classification could be considered eligible for USDA program benefits if the land user agreed to cultivate the land using an approved conservation plan.

There were two main exceptions. First, the farmer had until January 1, 1990, or two years after the completion of a soil survey—whichever was later—to be actively applying an approved conservation plan. Second, if a farmer was actively applying an approved conservation plan, then they had until January 1, 1995, to be full in compliance with the plan. The program benefits that could be lost included

- price supports and related payments,
- farm storage facility loans,
- crop insurance,
- disaster payments,
- any farm loans that will contribute to excessive erosion of highly erodible land, and
- storage payments made to producers for crops acquired by the Commodity Credit Corporation (CCC).

## **Swampbuster**

The “swampbuster” or wetland conservation provision extends the sodbuster requirement to wetland areas. Producers who plant a program crop on a converted wetland would be ineligible for certain USDA program benefits. The most controversial debate over the swampbuster provision was on the definition of an affected wetland areas. This resulted in many wetland areas being exempt, including

- wetlands converted before enactment (December 23, 1985),
- artificially created lakes, ponds, or wetlands,
- wetlands created by irrigation delivery systems,
- wetlands on which agricultural production is naturally possible, or
- wetlands converted if the effect of such action is minimal.

## **Changes Since the 1985 Farm Bill**

Since the enactment of the 1985 farm bill, each succeeding farm bill has amended the compliance provisions (both highly erodible land and wetland conservation).

## **1990 Farm Bill**

The compliance provisions were amended in several ways in the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624, 1990 farm bill). Conservation provisions were expanded to include wetlands converted after enactment (November 28, 1990), where agricultural commodity production was made possible. This meant that crop production did not actually have to occur in order to be found out of compliance, only that production was made possible through activities such as draining, dredging, filling, or leveling the wetland. The 1990 farm bill added six more federal farm programs to the list of benefits that could be lost for non-compliance, including many of the conservation programs. A graduated penalty was added so that under some circumstances, producers could be subject to a loss in benefits of between \$500 and \$5,000. This graduated penalty may be applied only once every five years. The revisions protect tenant farmers who may be ruled out of compliance because of the actions of the landowner or previous tenants. Compliance exemptions were also expanded to include highly erodible land set aside, or taken out of production, under the commodity support programs.

## **1996 Farm Bill**

Beginning in 1994, conservation policy discussions in Congress focused on identifying ways to make the compliance programs less intrusive on farmer activities. As a result, conservation compliance provisions were significantly amended in the Federal Agricultural Improvement and Reform Act of 1996 (P.L. 104-127, referred to as the 1996 farm bill). Many of the conservation compliance changes enacted in the 1996 farm bill were meant to provide producer flexibility and reduce the impact on farm operations. Some of the major amendments to highly erodible land conservation compliance in the 1996 farm bill include

- removing crop insurance from the list of benefits that could be lost if the farmer is found out of compliance;
- adding production flexibility contracts<sup>45</sup> to the list of benefits that could be lost if found out of compliance;
- highly erodible land exiting CRP would not be held to a higher compliance standard than nearby cropland;
- providing violators with up to one year to meet compliance requirements;
- developing procedures to expedite variances for weather, pest, or disease problems;
- requiring an erosion measurement before the conservation system is implemented;
- allowing third parties to measure residue and require that residue measurements take into account the top two inches of soil;
- allowing producers to modify plans as long as the same level of treatment is maintained;
- allowing local county committees to permit relief if a conservation system causes a producer undue economic hardship; and
- establishing a wind erosion estimation pilot study to review and modify as necessary wind erosion factors used to administer conservation compliance.

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<sup>45</sup> Producer flexibility contracts are now referred to as direct payments.



Several changes were made in the 1996 farm bill to the wetland conservation provisions as well. Similar to the provisions for highly erodible land, wetland conservation provisions were meant to provide greater program flexibility. Major changes included

- exempting swampbuster penalties when wetland values and functions are voluntarily restored following a specified procedure;
- providing that prior converted wetlands will not be considered “abandoned” as long as the land is only used for agriculture;
- giving the Secretary of Agriculture discretion to determine which program benefits violators are ineligible for and to provide good-faith exemptions;
- establishing a pilot mitigation banking program (using the CRP);
- repealing required consultation with the U.S. Fish and Wildlife Service; and
- expanding the definition of agricultural lands used in a 1994 interagency Memorandum of Agreement.

While the 1996 farm bill reduced the impact of the compliance requirements it also expanded the voluntary incentive-based programs for agricultural conservation. For the first time the majority of conservation funding was authorized as mandatory funding.<sup>46</sup> Total funding levels for conservation were increased. The conservation agenda was also broadened by adding wildlife considerations and evaluating nonpoint source pollution from agricultural sources.

## **2002 Farm Bill**

The Food Security and Rural Investment Act of 2002 (P.L. 107-171, 2002 farm bill) continued and expanded many of the conservation priorities in the 1996 farm bill, especially those related to voluntary incentive programs and increased funding. Few changes were made to the conservation compliance provisions. The primary change was the requirement that USDA not delegate authority to other parties to make highly erodible land determinations. Also, any person who had highly erodible land enrolled in the CRP was given two years after a contract expires to be in full compliance.

## **2008 Farm Bill**

The Food, Conservation and Energy Act of 2008 (P.L. 110-246, referred to as the 2008 farm bill) again made few changes to the conservation compliance provisions. The primary change was the addition of a second level of review by the state or district FSA director, with technical concurrence from the state or area NRCS conservationist if USDA determines that this exception should apply.

The 2008 farm bill also created the “sodsaver” provision under the crop insurance title (XII). The sodsaver provision would have made producers who planted crops (five or more acres) on native sod ineligible for crop insurance and the noninsured crop disaster assistance (NAP) program for the first five years of planting. The 2008 farm bill limited the provision to virgin prairie converted to cropland in the Prairie Pothole National Priority Area, but only if elected by the state. States included in the Prairie Pothole National Priority Area are portions of Montana, North Dakota, South Dakota, Minnesota, and Iowa. Ultimately no governors opted to participate in the program and sodsaver was never activated.

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<sup>46</sup> Mandatory funding is made available by multiyear authorizing legislation and does not require annual appropriations or subsequent action by Congress.

## 2014 Farm Bill

When the farm bill debate began in 2012, the fiscal climate made reductions in the farm bill baseline all but certain. One of the largest programs on the chopping block was direct payments in the commodity title. Because conservation compliance is tied to farm program benefits the loss of such a large benefit would ultimately reduce the incentive to comply with conservation requirements. Conservation advocates cited the need for additional farm program benefits to be tied to conservation compliance in exchange for the loss of direct payments. Ultimately the Agricultural Act of 2014 (P.L. 113-79, 2014 farm bill) added the federally funded portion of crop insurance premiums to the list of benefits that could possibly be lost if a producer were found out of compliance. The amendments, however, treat compliance violations and the loss of federal crop insurance premium subsidies separate from the loss of other farm program benefits.

Additionally, the 2014 farm bill amended the sodbuster provision by removing the elective option, reducing crop insurance subsidies rather than eliminating them, and expanding the provision to six states. **Table A-1** compares changes made by the 2014 farm bill to prior law.

**Table A-1. Comparison of Conservation Compliance Provisions Enacted in the 2014 Farm bill to Prior Law**

Prior Law	Enacted 2014 Farm Bill (P.L. 113-79)
<i>Sodbuster</i>	
Sec. 1211 of the FSA, as amended, requires that in exchange for certain USDA program benefits, a producer agrees to maintain a minimum level of conservation on highly erodible land (referred to as HEL compliance). Examples of affected benefit include commodity support programs (e.g., Title I farm bill programs), conservation programs, disaster payments, and operating loans. [ <b>16 U.S.C. 3811</b> ]	Adds the federally funded portion of crop insurance premiums to the list of program benefits that could be lost if a producer is found to produce an agricultural commodity on highly erodible land without an approved conservation plan or qualifying exemption. [ <b>Sec. 2611(a)(1)</b> ]
Sec. 1212 of the FSA, as amended, allows producers to cultivate crops on highly erodible land and remain eligible for program benefits if the landowner agrees to cultivate the land using an approved conservation plan or qualifies for an exemption. [ <b>16 U.S.C. 3812</b> ]	Provides a separate provision for crop insurance benefits. A person subject to compliance for the first time because of these amendments is given five reinsurance years to develop and comply with an approved conservation plan to remain eligible for payments. A person who would have been determined in violation had they continued participation in programs requiring compliance after enactment of this bill and are still in violation must be granted two reinsurance years to develop and comply with an approved conservation plan. A person found in violation during a crop year shall be ineligible for crop insurance premium subsidy. This applies to reinsurance years subsequent to the date of the final determination of a violation and does not apply to the existing reinsurance year or any reinsurance year prior to the date of the final determination. [ <b>Sec. 2611(a)(2)</b> ]
Sec. 1213 of the FSA, as amended, outlines the requirements for development and implementation of conservation plans for conservation compliance. [ <b>16 U.S.C. 3812a</b> ]	Requires that when determining crop insurance premium assistance, USDA must allow self-certification of compliance and act in a timely manner to evaluate such certifications, as well as avoid duplication or unnecessary paperwork. [ <b>Sec. 2611(a)(3)</b> ]
<i>Swampbuster</i>	

Prior Law	Enacted 2014 Farm Bill (P.L. 113-79)
<p>Sec. 1221 et seq. of the FSA, as amended, requires that in exchange for certain USDA program benefits, a producer agrees not to convert wetlands to crop production. The provision, known as Swampbuster, affects producers who plant a program crop on a wetland converted after December 23, 1985, or who convert wetlands, making agricultural commodity production possible, after November 28, 1990. Examples of affected benefits include commodity support programs (e.g., Title I farm bill programs), conservation programs, disaster payments, and operating loans. <b>[16 U.S.C. 3821 et seq.]</b></p>	<p>Adds the federally funded portion of crop insurance premiums to the list of program benefits that could be lost if a producer is found to have converted a wetland to crop production. Persons in violation who meet select criteria have a varying amount of time (one to two reinsurance years) to initiate a conservation plan to remedy a violation and remain eligible. Requires an annual report on ineligibility determinations. All persons applying for the federally funded portion of crop insurance in the first full reinsurance year after enactment must certify their compliance with the wetlands compliance provision. USDA must evaluate the certifications in a timely manner. A person found in violation is only declared ineligible following final determination and may not be retroactive. The timing of a violation affects eligibility. Only USDA is responsible for the enforcement of compliance. <b>[Sec. 2611(b)(2)]</b></p>
<p>Sec. 1222 of the Food Security Act of 1985 (FSA), as amended, allows USDA to exempt persons from ineligibility under wetland compliance (swampbuster) if certain factors exist, including: there is a minimal effect; the values, functions, and acreage are mitigated; conversion occurred after December 23, 1985, but before November 28, 1990, and are mitigated; or the action is authorized by a Clean Water Act section 404 permit (33 U.S.C. 1344). Sec. 1222(k) of the FSA, as amended, allowed USDA to operate a pilot program for mitigation banking. <b>[16 U.S.C. 3822]</b></p>	<p>Adds language that amends Sec. 1222(k) of the FSA, authorizing USDA to expand and make permanent the wetland mitigation banking pilot program. Provides \$10 million mandatory funding to remain available until expended. Allows access to existing mitigation banks. <b>[Sec. 2609]</b></p>
<p><i>Sodsaver</i></p>	
<p>Sec. 508(o) of the Federal Crop Insurance Act, as amended, and Sec. 196(a) of the Federal Agricultural Improvement and Reform Act of 1996, as amended, require that native sod planted to an insurable crop (over 5 acres) be ineligible for crop insurance and the noninsured crop disaster assistance program (NAP) for the first 5 years of planting. May apply to virgin prairie converted to cropland only in the Prairie Pothole National Priority Area, if elected by the state Governor. Native sod is defined as land with native grasses, forbs, and shrubs that have no history of being tilled for annual crop production. <b>[7 U.S.C. 1508(o)]</b> and <b>[7 U.S.C. 7333(a)(4)]</b></p> <p><i>To complete the actual production history (APH) database used for calculating the yield guarantee, a farmer can use a variable percentage of the transitional yield (T-yield), depending on the number of years of actual history: 1 year = 80%, 2 years = 90%, 3 years = 100%. Yield substitutes are allowed.</i></p>	<p>Removes the elective option and applies to all native sod in Minnesota, Iowa, North Dakota, South Dakota, Montana, and Nebraska. Replaces ineligibility with reduced benefits for crop insurance and NAP in the first 4 years of planting, including: (1) a reduction in the crop insurance premium subsidy by 50 percentage points, and NAP fee is doubled; (2) annual data for APH are equal to 65% of the transitional yield for all four years rather than the higher, variable percentage applicable for other cropland; and (3) for crop insurance, yield substitutes are not allowed; that is, low farm yields must be used in the APH rather than replacing them with potentially higher T-yields. (On other cropland, producers can substitute 60% of the T-yield for any actual yield below 60% of the T-yield). Amends the definition of native sod to include land where the producer cannot substantiate that the ground has never been tilled. <b>[Sec. 11014(a-b)]</b></p>
<p>No comparable provision.</p>	<p>Requires USDA to submit an annual report to Congress that describes cropland acreage in each applicable county and state, and the change in cropland acreage from the preceding year, beginning with calendar year 2000. <b>[Sec. 11014(c)]</b></p>

Source: CRS.

**Notes:** For additional information on changes in the 2014 farm bill, see CRS Report R43504, *Conservation Provisions in the 2014 Farm Bill (P.L. 113-79)*.

## Appendix B. FSA, NRCS, and RMA Responsibilities

**Table B-1. FSA, NRCS, and RMA Responsibilities Administering Conservation Compliance on Highly Erodible Land**

<b>FSA Responsibilities<sup>a</sup></b>	
<ul style="list-style-type: none"> <li>Establish field/tract boundaries, field numbers, and acreage</li> <li>Determine whether a tenant is required to produce an agricultural commodity on highly erodible land under the terms and conditions of an agreement between the landlord and the tenant or sharecropper</li> <li>Determine whether an individual, joint venture, or entity is a producer on a highly erodible field or converted wetland</li> <li>Determine whether the land meets the sodbuster provisions (i.e., was converted from native vegetation, such as grassland, rangeland, or woodland, to agricultural production after December 23, 1985)</li> <li>Determine if the conversion of a wetland was caused by a third party</li> <li>Provide general supervision for day-to-day conservation compliance operations</li> <li>Refer cases requiring a technical determination to NRCS</li> <li>Obtain producer's certification of intentions to comply with conservation compliance requirements</li> <li>Determine the accuracy of a producers certification according to the spot-check procedures</li> </ul>	<ul style="list-style-type: none"> <li>Consult with NRCS about the adequacy of conservation systems as needed</li> <li>Determine whether a producer violated the conservation compliance provisions (both highly erodible land conservation and wetland conservation)</li> <li>Notify new owners and operators of a tract of previous determinations and the status of conservation system on the tract</li> <li>Determine whether proceeds of a farm program loan made, insured, or guaranteed by FSA-Farm Credit will be used for a purpose that will contribute to excessive erosion on highly erodible land or to the conversion of a wetland to produce an agricultural commodity</li> <li>Determine whether persons qualify for a good faith exemption</li> <li>Determine on request whether application of a conservation system causes a person undue economic hardship</li> <li>Provide producers with appeal rights and mediation</li> <li>Consult with NRCS about determinations of third-party conversion</li> <li>Make determinations of ineligibility for certain program benefits, as violations are discovered</li> </ul>
<b>NRCS Responsibilities<sup>b</sup></b>	
<ul style="list-style-type: none"> <li>Provide technical assistance for conservation planning when requested, and applying conservation systems to the land upon request</li> <li>Make determinations for highly erodible soil map units and the predominance of highly erodible land in a field</li> <li>Determine whether land meets wetland criteria and whether a wetland exemption applies (see those listed above)</li> <li>Determine qualifications for temporary variances from the requirements of a conservation system</li> <li>Identify NRCS error or misinformation</li> </ul>	<ul style="list-style-type: none"> <li>Complete compliance reviews that are (1) regularly scheduled, (2) in response to an FSA request, and (3) in response to a whistleblower complaint</li> <li>Provide assistance for conservation system revisions for USDA participant reinstatement</li> <li>Provide FSA with information for making tenant exemption determinations and provide conservation planning assistance to the tenant</li> <li>Provide FSA with information for making good faith exemptions</li> <li>Apply a conservation system that meets the soil reduction and/or improvement criteria</li> </ul>
<b>RMA Responsibilities<sup>c</sup></b>	
<ul style="list-style-type: none"> <li>Provide the applicable information regarding determinations made by NRCS and FSA to the appropriate approved insurance providers</li> </ul>	<ul style="list-style-type: none"> <li>Not make any determination of eligibility regarding compliance with highly erodible land or wetland provisions</li> </ul>

**Source:** Compiled by CRS.

- a. As outlined in USDA Farm Service Agency, *Highly Erodible Land Conservation and Wetland Conservation Provisions*, FSA Handbook 6-CP (revision 4), Washington, DC, [http://www.fsa.usda.gov/Internet/FSA\\_File/6-cp\\_r04\\_a04.pdf](http://www.fsa.usda.gov/Internet/FSA_File/6-cp_r04_a04.pdf).
- b. As outlined in USDA Natural Resources Conservation Service, *National Food Security Act Manual, Fifth Edition*, M\_180\_NFSM\_510, November 2010.
- c. As outlined in 7 CFR 12.6(f).

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