



Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

RIN 0563-AC56

**Highly Erodible Land Conservation and Wetland Conservation; Conforming
Amendment**

AGENCY: Office of the Secretary and Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the United States Department of Agriculture regulations to conform to the changes regarding conservation compliance made by the Federal Crop Insurance Corporation (FCIC) to its regulations in Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Basic Provisions; and Common Crop Insurance Policy Basic Provisions. These changes will provide more flexibility for conservation compliance determinations; reduce burdens on policyholders; and will allow the conservation compliance certification process for crop insurance to be administered more consistently with the practices of the Farm Service Agency (FSA).

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Risk Management Agency, telephone (816) 926-7730; Joe Fuchtman, Farm Service Agency, telephone (202) 260-9146; or Jason Outlaw, Natural Resource Conservation Service, telephone (202) 720-7838.

SUPPLEMENTARY INFORMATION:

Background

Recently, FCIC published a final rule in the *Federal Register*, titled “General Administrative Regulations; Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions,” that included changes to remove the June 1 deadline prior to the July 1 reinsurance year for a Form AD-1026 conservation compliance certification to be on file with FSA related to ineligibility for federal crop insurance premium subsidies. The same June 1 deadline was also included in the USDA regulations in 7 CFR part 12 for Highly Erodible Land Conservation and Wetland Conservation provisions (also known as conservation compliance provisions). The FCIC final rule removed the June 1 deadline from the regulations for Catastrophic Risk Protection Endorsement, the Area Risk Protection Insurance Basic Provisions, and the Common Crop Insurance Policy Basic Provisions and instead requires the AD-1026 to be filed with FSA for the reinsurance year by the premium billing date unless an exception applies.

USDA is amending the Highly Erodible Land Conservation and Wetland Conservation provisions to conform to the changes to the Catastrophic Risk Protection Endorsement, the Area Risk Protection Insurance Basic Provisions, and the Common Crop Insurance Policy Basic Provisions regarding conservation compliance.

The specific changes to the Highly Erodible Land Conservation and Wetland Conservation regulation include removing the date of June 1 from the conservation compliance provisions and adding a reference to the premium billing date. Because the June 1 date is being removed, USDA is also revising the exception for farmers who

began farming after June 1 to instead refer to producers who meet the Risk Management Agency's conditions for farmers who are new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD-1026.

These changes will provide more flexibility for FSA conservation compliance determinations, reduce burdens on policyholders and will allow the conservation compliance certification process for crop insurance to be administered more consistently with the way it is administered for other USDA programs while maintaining conformance to the Conservation Compliance provisions mandated by the Congress in the Agricultural Act of 2014.

Executive Orders 12866, 13563, and 13771

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 not significant under Executive Order 12866, "Regulatory Planning and Review," and therefore, OMB has not reviewed this rule. The rule is not subject to Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs."

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

USDA is committed to complying with the E-Government Act of 2002, 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.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of 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 EO 13175. If a Tribe requests consultation, USDA will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

USDA certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation is a conforming amendment to a final rule published by FCIC that states the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to file an AD-1026 with FSA to be eligible for premium subsidy. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (FCIA) authorizes FCIC to waive collection of administrative fees

from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See 2 CFR part 415, subpart C.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 12

Crop insurance, Reporting and recordkeeping requirements, Soil conservation.

Final Rule

Accordingly, as set forth in the preamble, 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 continues to read as follows:

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

2. Amend § 12.13 by revising paragraph (b) to read as follows:

§ 12.13 Special Federal crop insurance premium subsidy provisions.

* * * * *

(b) *Ineligibility for failing to certify compliance.* Subject to paragraph (b)(2) 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 filed with FSA for the reinsurance year in order for the person to be eligible for any Federal crop insurance premium subsidies for the reinsurance year. Persons will be ineligible for Federal crop insurance premium subsidy on their crop insurance policy if form AD-1026, or successor form, has not been filed with FSA for the reinsurance year by the premium billing date for their Federally-reinsured crop insurance policy.

(2) A person that has not filed an AD-1026 for the reinsurance year by the premium billing date may be eligible for premium subsidy for the reinsurance year if they 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 due to circumstances beyond the person’s control, as determined by FSA; or

(ii) Files a Form AD–1026 in good faith and FSA subsequently determines that additional information is needed, but the person is unable to comply 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 for the reinsurance year may be eligible for Federal crop insurance premium subsidy for the initial reinsurance year if the person can demonstrate they meet RMA’s conditions for new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD-1026.

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Dated: December 1, 2017.

Stephen L. Censky
Deputy Secretary
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