



# 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 conservation provisions designed to reduce 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.

As Congress considers the reauthorization of farm policy through the next farm bill, issues related to conservation compliance have emerged. The reduction in soil erosion from highly erodible land conservation continues, but at a slower pace than following 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 should encourage additional reductions in erosion. These broad policy questions, in addition to general concerns of program oversight and implementation, continue to influence the farm bill debate.

One of the most controversial issues has been the idea that crop insurance subsidies should be added to the list of benefits that could be lost if a producer is found to be out of compliance. Federal crop insurance subsidies were originally included as a benefit that could be denied under the compliance provisions. However, they were removed in the 1996 farm bill to increase producer flexibility, while at the same time direct payments were added. Presently, high commodity prices have resulted in few or no counter-cyclical payments, leaving conservation program participation and direct payments as the remaining major benefits that might motivate producer compliance with conservation requirements. The Senate-passed farm bill in the 112<sup>th</sup> Congress (S. 3240) would have eliminated counter-cyclical and direct payments, and retied federal crop insurance subsidies to compliance requirements. The House-reported farm bill (H.R. 6083) would also have eliminated direct payments, but did not tie crop insurance subsidies to compliance requirements. Many environmental and conservation groups support the re-tying of crop insurance subsidies to compliance requirements, while some farm organizations and the crop insurance industry continue to oppose the measure. Both the Senate-passed and House-reported bills established a “sodsaver” provision for new crop production on native sod. The provision reduced crop insurance premium subsidies and prohibited benefits under the Noninsured Crop Disaster or general commodity programs on land that has never been tilled. Neither bill was enacted in the 112<sup>th</sup> Congress, leaving the issue to the 113<sup>th</sup> Congress.

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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. As Congress continues to debate the reauthorization of the farm bill, questions surrounding conservation compliance have arisen, such as how it works, whether it is effective, whom it impacts, how it has changed over time, and how it might continue if current farm programs change. One of the most controversial issues has been whether conservation compliance should be tied to federal crop insurance subsidies.

## 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>3</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>4</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 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 idea 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.

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<sup>1</sup> CRP is not discussed in depth in this report. For additional information and issues related to CRP reauthorization, see CRS Report R42093, *Agricultural Conservation and the Next Farm Bill*.

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

<sup>3</sup> H.Rept. 99-271, p. 84.

<sup>4</sup> *Ibid.*, p. 88.

In addition to the application of an approved conservation plan, a number of exemptions are possible.<sup>5</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, pest, 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 relief if it is determined that a conservation system causes a producer undue economic hardship.

### 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>

## 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 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.

<sup>5</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.

<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).

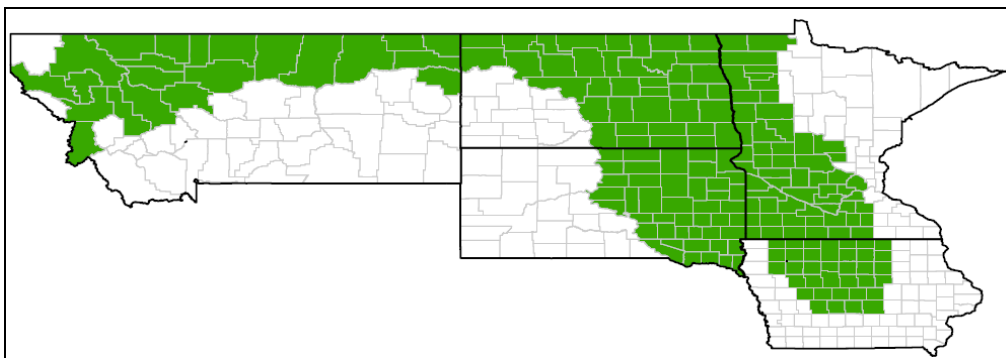
Under the wetlands compliance provision, the following lands are considered exempt:

- 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 (33 U.S.C. 1344), for which wetland values, acreage, and functions of the converted wetland were adequately mitigated.

## Sodsaver

The 2008 farm bill created a new compliance provision under the crop insurance title (Section 12020), known as sodsaver. The sodsaver provision makes producers who plant an insurable crop (5 or more acres) on native sod ineligible for crop insurance and the noninsured crop disaster assistance (NAP) program<sup>7</sup> for the first five years of planting. The conference agreement to the 2008 farm bill states that this provision may apply to virgin prairie converted to cropland in the Prairie Pothole National Priority Area (**Figure 1**), but only if elected by the state. USDA established a sign-up date of February 15, 2009, in which no governors opted to participate in the program. Additional opportunities to participate are possible, though thought unlikely, if the program remains voluntary.

**Figure 1. Prairie Pothole National Priority Area**



**Source:** USDA, RMA, Prairie Pothole National Priority Area, April 28, 2008, [http://www.rma.usda.gov/data/pothole/2008/all\\_states.pdf](http://www.rma.usda.gov/data/pothole/2008/all_states.pdf).

**Notes:** States included in the Prairie Pothole National Priority Area (left to right) are Montana, North Dakota, South Dakota, Minnesota, and Iowa.

<sup>7</sup> For more information on crop insurance and NAP, see CRS Report R40532, *Federal Crop Insurance: Background* and CRS Report RS21212, *Agricultural Disaster Assistance*.

## 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 1** 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. Conservation compliance provisions do not apply to the federal crop insurance program as administered by USDA’s Risk Management Agency (RMA).

**Table 1. 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.	Direct payments, counter-cyclical payments, Milk Income Loss Contract (MILC) payments, Average Crop Revenue Election (ACRE), 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, 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), Tree Assistance Program (TAP), and Supplemental Revenue Assurance (SURE) <sup>b</sup>
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>c</sup>	FSA Farm Operating Loans, Farm Ownership Loans, and Emergency Disaster Loans
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 Water Enhancement Program (AWEP), Conservation Stewardship Program (CSP), Conservation Reserve Program (CRP), Environmental Quality Incentives Program (EQIP), Farmland Protection Program (FPP), Grassland Reserve Program (GRP), Wetlands Reserve Program (WRP), and Wildlife Habitat Incentives Program (WHIP).
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. Authority expired September 30, 2011, for new contracts under EFRP, and for disaster payments under ELAP, LFP, LIP, TAP and SURE for disasters occurring after that date.
- c. 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.

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.

## 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 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 2**). 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 year's benefits.

**Table 2. Summary of Conservation Compliance Status Reviews**

	2007	2008	2009	2010
Total Tracts Reviewed	20,134	22,755	20,474	18,704
Tracts Out of Compliance	276	333	277	344
Percentage Out of Compliance	1.4%	1.5%	1.4%	1.8%
Number of States Recording Non-Compliance	33	34	30	28

**Source:** USDA, NRCS.

**Notes:** Totals do not include the number of variances or exemptions issued within a given year. For example, in 2010, 4% (732 tracts) of tracts reviewed were issued variances or exemptions and therefore not considered to be out of compliance.



## 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. As the 112<sup>th</sup> Congress continues to debate the reauthorization of farm programs, issues related to conservation compliance have been raised.

### Crop Insurance Linkage

The 1996 farm bill made several changes to conservation programs (see **Appendix A**). It not only strengthened voluntary incentive conservation programs but also lessened the effect on certain conservation compliance provisions. Most notably, the 1996 farm bill removed crop insurance as a program benefit that could be denied, and added production flexibility contracts—now referred to as direct payments. The debate surrounding this decision centered on the policy goal of encouraging producers to purchase crop insurance while responding to farmer concerns that compliance requirements were too intrusive.

Currently, the major farm program benefits that could be affected by compliance are direct payments, counter-cyclical payments, and payments under conservation programs. High commodity prices in recent years have resulted in few or no counter-cyclical payments. This leaves conservation program participation and direct payments as the remaining major benefits that could motivate producer compliance with conservation requirements. The current financial climate has caused direct payments under the farm commodity support programs to come under considerable scrutiny. Debate continues regarding their fate, and many believe that payments could be reduced or eliminated in the next farm bill reauthorization as a budget saving measure. Conservation advocates worry that without direct payments there will be little incentive for producers to meet conservation compliance and wetland conservation requirements.

One solution, offered by environmental and conservation organizations, is re-coupling conservation compliance to crop insurance premium subsidies. Crop insurance is purchased by a producer growing an insurable crop and a percentage of the premium (averaging about 60% of the total) is paid for by the federal government.<sup>8</sup>

Farm organizations and the crop insurance industry are generally opposed to tying crop insurance to compliance requirements, citing the potential for reduced farmer participation in crop insurance.<sup>9</sup> Agricultural interest groups also cite the possibility of losing crop insurance subsidies

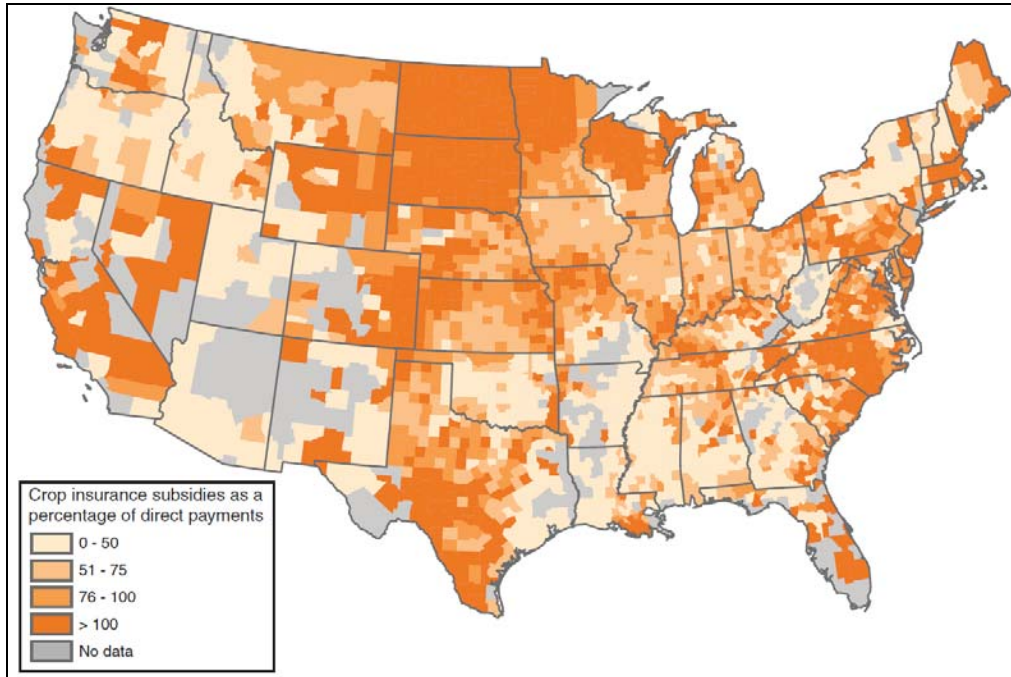
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<sup>8</sup> The government-paid portion of crop insurance premiums can range between 38% to 80% of the total premium. A producer's premium for a policy increases as the levels of insurable yield and price coverage rise, and the premium on buy-up coverage is subsidized by the government depending on the coverage level. The subsidy rate declines as the coverage level rises, but the total premium subsidy in dollars increases because the policies are more expensive. In total, the government cost for crop insurance programs was \$11.3 billion in FY2011. Insurance policies are sold and completely serviced through 15 approved private insurance companies; however, the insurance companies' losses are reinsured by USDA, and their administrative and operating costs are reimbursed by the federal government. For additional information, see CRS Report R40532, *Federal Crop Insurance: Background*.

<sup>9</sup> For example, several groups voiced opposition to the linkage of crop insurance subsidies to conservation compliance during the Senate Committee on Agriculture, Nutrition, and Forestry hearing on risk management and commodities in the 2012 farm bill (March 15, 2012), including the American Soybean Association, the U.S. Rice Federation, the U.S. Rice Producers Association, the National Association of Wheat Growers, the National Council for Farmer Cooperatives, and the American Farm Bureau Federation. For individual testimonies, see <http://www.ag.senate.gov/hearings/risk-management-and-commodities-in-the-2012-farm-bill>.

when severe weather events out of their control occur.<sup>10</sup> Environmental interest groups counter this argument, stating that the exemptions allowed under the law provide producers relief from such a determination, including variance exemptions (variance from prescribed conservation plan practices for the purpose of handling a specific weather, pest, or disease problem), good faith exemptions (the producer acted in good faith and without the intent to violate the compliance provision), and economic hardship exemptions (variance when the application of the conservation system would impose an undue economic hardship).<sup>11</sup> A few farm industry groups support linking crop insurance subsidies to conservation compliance.<sup>12</sup>

**Figure 2. County-Level Crop Insurance Subsidies and Direct Payments, 2005-2010**



**Source:** Roger Claassen, *The Future of Environmental Compliance Incentives in U.S. Agriculture: The Role of Commodity, Conservation, and Crop Insurance Programs*, USDA, ERS, Bulletin No. 94, Washington, DC, March 2012, <http://www.ers.usda.gov/Publications/EIB94/EIB94.pdf>.

**Notes:** County-level estimates based on average direct payments and crop insurance subsidies.

According to USDA's Economic Research Service (ERS),<sup>13</sup> if direct payments were reduced or eliminated and crop insurance was once again added to the list of possible USDA program

<sup>10</sup> U.S. Congress, Senate Committee on Agriculture, Nutrition, and Forestry, *Statement of the American Farm Bureau Federation, President Bob Stallman*, hearing on risk management and commodities in the 2012 farm bill, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 15, 2012, p. 7.

<sup>11</sup> Craig Cox, "Guest Columnist: The Farm Bureau Bogeyman," *Des Moines Register*, January 30, 2012.

<sup>12</sup> National Farmer Union, "Policy of the National Farmers Union Enacted by delegates to the 111<sup>th</sup> anniversary convention," Springfield, Massachusetts, March 2-5, 2013, <http://www.nfu.org/images/stories/policy/FINAL%202013%20policy.pdf> and American Farmland Trust, "Conservation Compliance: A Key Part of Incentive-Based Conservation," March 7, 2012, <http://www.farmlandfacts.org/conservation-compliance-a-key-part-of-incentive-based-conservation>.

<sup>13</sup> Roger Claassen, *The Future of Environmental Compliance Incentives in U.S. Agriculture: The Role of Commodity, Conservation, and Crop Insurance Programs*, USDA, ERS, Bulletin No. 94, Washington, DC, March 2012, <http://www.ers.usda.gov/Publications/EIB94/EIB94.pdf>.

benefits subject to conservation compliance, the incentive for compliance could vary depending on location. In areas with higher crop production risk, such as the Northern Plains, crop insurance could provide a compliance incentive that is equal to or even larger than the current one tied to direct payments. In other areas where direct payments offer more of an incentive but crop insurance is not as widely utilized, such as the Mississippi Delta, there might be less incentive to comply with conservation requirements (**Figure 2**).

## 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 3**). The leveling off of reduced erosion leaves several broad policy questions that may be discussed in the context of the next farm bill, 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 2007, 99 million acres (28% of all cropland) was eroding above soil loss tolerance (T) rates (see text box).<sup>15</sup> This compares to 169 million acres (40% of cropland) in 1982. Between 1982 and 2007, farmers reduced total cropland soil erosion by 43% (**Figure 3**). 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

### 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>14</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>14</sup> 7 C.F.R. §12.21(a)

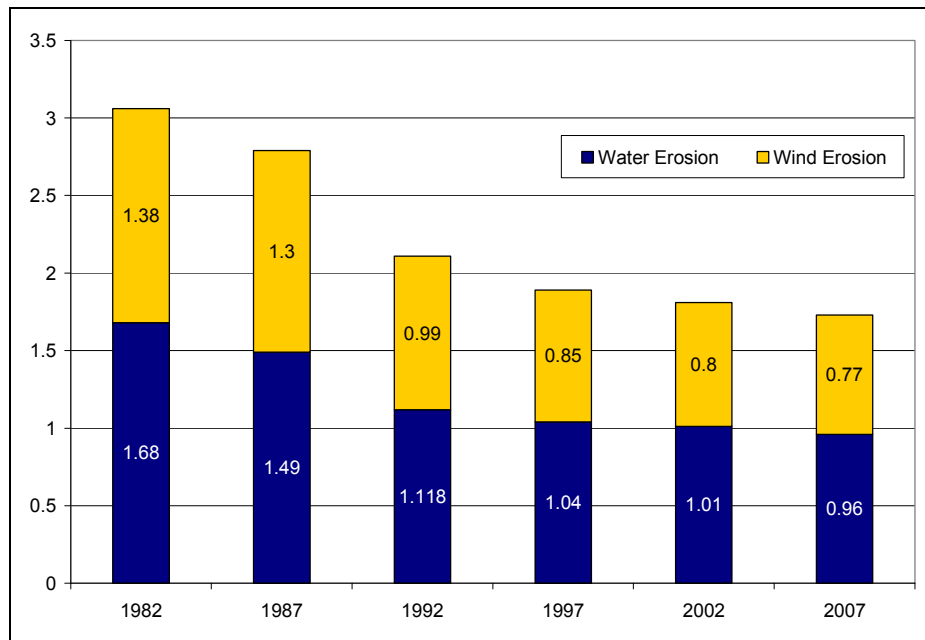
<sup>15</sup> USDA, NRCS, *2007 National Resources Inventory: Soil Erosion on Cropland*, April 2010, [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs143\\_012269.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_012269.pdf).

and 1997 (most recent information available).<sup>16</sup> Another 31%, or 365 million tons reduced could be attributed to land use changes, including CRP enrollment.<sup>17</sup>

Funding and program authority for CRP will expire on September 30, 2013. House and Senate farm bill proposals in the 112<sup>th</sup> Congress would have reduced the acreage enrollment in CRP from its current authorized level of 32 million acres to 25 million acres. This could have a potential impact on soil erosion, the magnitude of which is unclear.

**Figure 3. Soil Erosion on Cropland by Year**

(billions of tons)



**Source:** USDA, NRCS, 2007 National Resources Inventory: Soil Erosion on Cropland, April 2010, [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs143\\_012269.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_012269.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>18</sup> Other farm bill programs such as the Wetlands Reserve Program (WRP) and CRP, seek to provide a reverse effect and encourage landowners to restore wetlands. Between 1997 and 2007, USDA estimates that the U.S. experienced a net wetlands gain of about 250,000

<sup>16</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>17</sup> Ibid.

<sup>18</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*.

acres.<sup>19</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. Both WRP and CRP are to be considered for reauthorization in the next farm bill. Whether the wetland conservation provision is an effective policy tool for reducing wetland conversions, compared to financial incentives programs (i.e., WRP and CRP) could be part of the policy debate.

Swampbuster continues to be a controversial provision with some producers. NRCS completes certified wetland determination in response to request from producers, or in response to whistleblower complaints. With commodity crop prices currently at high levels, producers desire to increase their agricultural production by clearing and/or draining wetlands, and request wetland determinations from the NRCS to ensure compliance with the wetland conservation provision. This has led to an increased workload for NRCS and could impact the ability of NRCS to provide technical assistance for other farm bill programs.

## 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>20</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 that 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 committee, 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>21</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>22</sup> Between 1993 and 2005, a total of \$125 million in program benefits was subject to withholding

<sup>19</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).

<sup>20</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>21</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>22</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.

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>23</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. Congress may consider remaining oversight issues and the enforcement of conservation compliance in the next farm bill.

## **Actions in the 112<sup>th</sup> Congress**

### **Senate Bill S. 3240**

The Senate passed the Agricultural Reform, Food, and Jobs Act of 2012 (S. 3240) on July 21, 2012. In addition to other conservation changes, the bill retied federal crop insurance premium subsidies to conservation compliance requirements. The provision was added as a floor amendment.<sup>24</sup> Under the Senate-passed bill, producers on highly erodible land affected by this change would have until January 1 of the fifth year after the date on which payments became subject to compliance to develop and implement an approved conservation plan. Compliance with wetlands conservation (swampbuster) would be effective immediately.

The Senate-passed bill also included a new nationwide “sodsaver” provision that would reduce crop insurance premium subsidies by 50 percentage points<sup>25</sup> for production on native sod during the first four years of planting. Crops planted on native sod would also be ineligible for the Noninsured Crop Assistance Program (NAP) and general commodity support programs. The bill also repealed select farm program benefits that are currently tied to conservation compliance—direct payments and counter-cyclical payments—while adding a new farm program (Agricultural Crop Risk, ARC) to the list of affected benefits.

Many in the conservation and environmental community support the conservation compliance changes included in S. 3240. Some farm organizations and crop insurers were surprised by the Senate bill’s addition of crop insurance as an affected program benefit under conservation compliance and continue to oppose the measure, suggesting that such a prerequisite might reduce farmer participation in the federal crop insurance program.

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<sup>23</sup> H.Rept. 110-627.

<sup>24</sup> “Amendment No. 2438,” Senate consideration of the Agriculture Reform, Food, and Jobs Act of 2012, *Congressional Record*, vol. 158, part 94 (June 20, 2012), pp. S4353-S4354.

<sup>25</sup> In 2011, an average of 62% of a producers insurance premium was paid for by the federal government. The Senate-passed sodsaver provision could reduce a producer’s crop insurance premium subsidy by 50 percentage points if found out of compliance. For example, a 50 percentage point reduction would lower a premium subsidy rate of 62% to 12%.

## **House Bill H.R. 6083**

The House Committee on Agriculture passed the Federal Agriculture Reform and Risk Management Act of 2012 (H.R. 6083) on July 12, 2012. The House-reported bill did not retitle crop insurance subsidies to conservation compliance requirements like the Senate-passed bill. No amendments on the issue were offered during committee markup.

H.R. 6083 did include a sodsaver provision for crops planted on native sod that is similar to the Senate-passed bill. The House-reported version of sodsaver, however, is limited to the Prairie Pothole National Priority Area (**Figure 1**), located in Montana, North Dakota, South Dakota, Minnesota, and Iowa.

The House-reported bill was never brought to the floor for debate in the 112<sup>th</sup> Congress and therefore no legislation was enacted. A temporary farm bill extension was passed in the American Taxpayer Relief Act of 2012 (P.L. 112-240), but no changes were made to conservation compliance.

## **Conclusion**

As Congress continues to consider the reauthorization of farm policy in the next omnibus farm bill, there is considerable pressure to reduce federal spending. While most farm organizations prefer voluntary financial incentive programs to policies such as conservation compliance, increasing or maintaining funding levels for such financial incentives could be challenging. Some point to the use of agricultural conservation compliance provisions as a way to discourage the degradation of private lands without increasing federal spending. This approach, however, has historically met with controversy, which seems likely to continue.

## 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 fifty 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>26</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>27</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>28</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>29</sup> The other conservation

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<sup>26</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>27</sup> U.S. Department of Agriculture, *Summary of Appraisal, Parts I and II, and Program Report*, GPO 1980 633-769/460, 1980.

<sup>28</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>29</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* (continued...)



provisions were highly erodible land conservation (sodbuster) and wetland conservation (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,

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(...continued)

*Next Farm Bill.*

- 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 \$5000. 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>30</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;

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<sup>30</sup> Producer flexibility contracts are now referred to as direct payments.

- 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.

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>31</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.

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<sup>31</sup> Mandatory funding is made available by multiyear authorizing legislation and does not require annual appropriations or subsequent action by Congress.

## **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.

## Appendix B. FSA and NRCS Responsibilities

**Table B-1. FSA and NRCS 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>
<p>a. As outlined in USDA Farm Service Agency, <i>Highly Erodible Land Conservation and Wetland Conservation Provisions</i>, FSA Handbook 6-CP (revision3), Washington, DC, <a href="http://www.fsa.usda.gov/Internet/FSA_File/6-cp.pdf">http://www.fsa.usda.gov/Internet/FSA_File/6-cp.pdf</a>.</p> <p>b. As outlined in USDA Natural Resources Conservation Service, <i>National Food Security Act Manual, Fifth Edition</i>, M_180_NFSM_510, November 2010.</p>	

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