

1 Overview

A. Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC)

HELC and WC provisions aim to reduce soil loss on erosion-prone lands and to protect wetlands for the multiple benefits they provide. The Food Security Act of 1985, as amended by the Agricultural Act of 2014, provides that, unless exempted, persons are ineligible for any portion of the premium paid by the Federal Crop Insurance Corporation (FCIC) for a policy or plan of insurance, including Catastrophic Risk Protection (CAT) policies, under the Federal Crop Insurance Act if they:

- (1) produce an agricultural commodity on a field that is determined to be highly erodible, as determined by the Natural Resources Conservation Service (NRCS), unless the production of an agricultural commodity on such land is in compliance with an approved conservation plan;
- (2) plant an agricultural commodity on a wetland that was converted after February 7, 2014;
or
- (3) convert a wetland after February 7, 2014, by draining, dredging, filling, leveling, or any other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible on such converted wetland.

For HELC and WC purposes, an “agricultural commodity” is any crop planted and produced by annual tilling of the soil, including one-trip planters and sugarcane. The provisions apply to eligibility for USDA benefits, including premium subsidy for Federal crop insurance, but the benefit itself does not have to be based on an agricultural commodity.

Example: Insured A’s farming operation includes oats, wheat, corn, perennial native grass pasture, cattle, blueberries, and pears. Insured A insures all the commodities except oats and pasture. Insured A plants the oats on highly erodible land without an NRCS approved conservation plan for the land. Planting oats, an agricultural commodity, on highly erodible land without an approved conservation plan is a violation of the HELC provision. Insured A will be ineligible for premium subsidy on all policies, including wheat, corn, cattle, blueberries and pears, because of the HELC violation.

Refer to section 7 for exemptions that provide extra time to comply with HELC and WC provisions.

B. Approved Insurance Provider (AIP) and Agent Responsibility

AIPs and crop insurance agents cannot make any determinations regarding an insured’s compliance with the HELC and WC provisions. In addition, AIPs and crop insurance agents cannot sign forms or documents, including form AD-1026, used to make HELC and WC determinations on behalf of an insured, unless they have a valid power of attorney to act on behalf of the insured.

2 Eligibility

A. Eligibility for Crop Insurance

The HELC and WC provisions apply to the eligibility for Federal crop insurance premium subsidy paid by FCIC, not a person's eligibility to obtain crop insurance. A person may obtain crop insurance without being in compliance with the HELC and WC provisions but, such person will not be eligible for any premium subsidy on any policy or plan of insurance, including CAT policies.

B. Eligibility for Premium Subsidy

To be eligible for premium subsidy for any policy or plan of insurance, a person must:

- (1) have a completed and signed form AD-1026, Highly Erodible Land Conservation and Wetland Conservation Certification, on file with the Farm Service Agency (FSA) on or before June 1 prior to the reinsurance year (the period starting July 1 prior to the sales closing date and ending on June 30 of the following year);
- (2) be in compliance with the HELC and WC provisions of the Food Security Act of 1985, as amended, and the regulations at 7 CFR part 12; and
- (3) pay any equitable contribution by the due date, if required by NRCS.

Any affiliated person (as determined by FSA in accordance with FSA's procedures) of a producer requesting benefits subject to HELC and WC provisions must also be in compliance with those provisions. If an affiliated person has a farming interest (as owner, operator, or other producer on any farm), the affiliated person must also file Form AD-1026 certifying compliance with HELC and WC provisions.

It is the person's responsibility to ensure they have a completed and signed form AD-1026 on file with FSA and they are in compliance with the HELC and WC provisions. Eligibility for premium subsidy will be based on final determinations, including all administrative appeals, made by FSA and NRCS. Neither RMA, FCIC, AIP, or any employee, agent, or contractor thereof, will make any determination regarding whether a person has form AD-1026 on file or is in compliance with the HELC and WC provisions.

For HELC and WC purposes, administrative appeals include appeals made according to 7 CFR § 12.12, and appeals to the National Appeals Division, but do not include any judicial review or appeal, or any other legal action.

See Paragraph 3 for information about form AD-1026 and exceptions to the June 1 deadline for filing form AD-1026.

2 Eligibility (Continued)

C. Reinsurance Year(s) of Ineligibility

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

Unless an exemption applies, ineligibility for premium subsidy for a violation of the HELC or WC provisions will begin the first reinsurance year subsequent to the date of a final determination of a violation, including all administrative appeals.

Example: On March 9, 2016, NRCS determines Insured B is in violation of the HELC provisions, and provides Insured B applicable appeal rights. On May 11, 2016, Insured B has exhausted all administrative appeals and the NRCS determination of a HELC violation is final. Insured B will be ineligible for premium subsidy on all policies and plans of insurance for the 2017 reinsurance year. That includes all policies with a sales closing date between July 1, 2016 and June 30, 2017.

See Paragraph 7 for situations when additional time is provided for persons to develop conservation or mitigation plans. See Paragraph 8 for exemptions that may result in a person remaining eligible for premium subsidy the subsequent reinsurance year after the date of a final determination of a violation.

3 Form AD-1026 Certification of Compliance

A. Certification of Compliance

Form AD-1026 is the form a person must complete, sign, and file with FSA to be eligible for premium subsidy on any policy or plan of insurance. The form is not farm or crop specific, but covers all land in all states and counties in which the person has an interest. Therefore, a person only completes one form for all their acreage. Form AD-1026 is a continuous certification, which means that once it is accurately completed and filed with FSA, it remains effective and a person does not have to refile or update the form again, unless there are changes to the operation or new activities that occur that affect the person's certification. See Subparagraph B for more information about updating form AD-1026.

Each person seeking eligibility for premium subsidy must complete, sign, and file form AD-1026 with FSA.

3 Form AD-1026 Certification of Compliance (Continued)

A. Certification of Compliance (continued)

Example: A producer has one farming operation they operate as an individual and another separate farming operation they operate as a corporation. The “individual” and the “corporation” are separate persons, each with a unique tax identification number. Each person, the individual and the corporation, must complete, sign, and file separate AD-1026 forms if each person wishes to be eligible for premium subsidy.

It is the person’s responsibility to ensure they have an accurately completed and signed form AD-1026 on file with FSA. FSA will assist persons with completing and understanding form AD-1026 and its appendix.

A person must have a completed and signed form AD-1026 on file with FSA on or before June 1 to be eligible for premium subsidy for the subsequent reinsurance year on any policy or plan of insurance with a sales closing date on or after July 1. A person who does not have form AD-1026 on file with FSA on or before June 1 will be ineligible for premium subsidy on all policies and plans of insurance for the entire subsequent reinsurance year.

Example: Producer C does not have form AD-1026 on file with FSA by June 1, 2015. Producer C can obtain crop insurance for reinsurance year 2016; however, the producer will be ineligible for premium subsidy for all policies and plans of insurance for the 2016 reinsurance year. Even if Producer C completes, signs, and files form AD-1026 sometime after June 1, 2015, Producer C will remain ineligible for premium subsidy on all policies and plans of insurance until the 2017 reinsurance year.

Exception 1: A person who does not have form AD-1026 on file with FSA on or before June 1 prior to the beginning of the reinsurance year may be eligible for premium subsidy for the subsequent reinsurance year (beginning July 1 following the June 1 deadline), if the person can demonstrate they began farming for the first time after June 1, but prior to the earliest applicable sales closing date (the earliest applicable sales closing date for all their crop policies insured nationwide during the reinsurance year) for the subsequent reinsurance year (beginning July 1 following the June 1 deadline). See Paragraph 5 for more information about this exception.

Exception 2: A person will have until the first applicable crop insurance sales closing date (the earliest applicable sales closing date for all of their crop policies insured nationwide during the reinsurance year) to provide form AD-1026 if the person:

- (1) is unable to file a form AD-1026 by June 1 due to circumstances beyond the person’s control, as determined by FSA; or

3 Form AD-1026 Certification of Compliance (Continued)

A. Certification of Compliance (continued)

- (2) in good faith filed form AD-1026 and FSA subsequently determines that additional information is needed, but the person is unable to comply by July 1 due to circumstances beyond the person's control, as determined by FSA.

FSA will notify RMA of all persons who meet this exception.

Each year RMA will obtain, between June 1 and July 1, FSA's automated AD-1026 records indicating all persons who have a completed and signed form AD-1026 on file by June 1. Those records, in combination with FSA's HELC and WC compliance records, will determine a person's eligibility for premium subsidy for the subsequent reinsurance year. AIPs may obtain producers' premium eligibility status by July 1, 2015. Appendix III contains information on procedures for obtaining this information. See Paragraph 4 for information about FSA's HELC and WC compliance records.

AIPs and crop insurance agents do not need copies of a person's form AD-1026, and should not ask FSA for copies.

B. Updating Previously Filed AD-1026

Form AD-1026 is a continuous certification, which means that once it is accurately completed and filed with FSA it remains effective and a person does not have to refile or update the form unless there are changes to the operation or new activities that occur that affect the person's certification. If a person is determined to be in violation of HELC or WC provisions and to have exhausted all administrative appeals or quit participating in USDA benefit programs, and changes are subsequently made to the operation to come into compliance, form AD-1026 must be updated and filed with FSA to regain eligibility for premium subsidy.

A person who fails to notify FSA of any change that could alter their status as compliant with the HELC or WC provisions and is subsequently determined, by FSA or NRCS, to have committed a violation of the WC provisions after February 7, 2014, will be required to pay NRCS an equitable contribution.

The amount of equitable contribution will be determined by NRCS based on the severity of the violation, but will **not** exceed the total amount of Federal crop insurance premium subsidy paid by FCIC on behalf of the person for all policies and plans of insurance for all years in which the person is determined to have been in violation. A person who fails to pay the full equitable contribution amount by the due date determined by NRCS will be ineligible for premium subsidy on any policy or plan of insurance beginning with the subsequent reinsurance year. The person will be ineligible for premium subsidy for the entire reinsurance year even if full payment of the equitable contribution amount is received by NRCS during the reinsurance year.

3 Form AD-1026 Certification of Compliance (Continued)

B. Updating Previously Filed AD-1026 (continued)

It is the person's responsibility to ensure they update form AD-1026 when appropriate. FSA will assist a person in determining when form AD-1026 should be updated. Only NRCS can determine the amount of equitable contribution to be paid. RMA will provide NRCS any needed information about the amount of premium subsidy paid by FCIC for any person determined to owe an equitable contribution to NRCS.

4 HELC and WC Compliance Records

Compliance with the HELC and WC provisions is determined by FSA and NRCS. Determinations are recorded in FSA's automated HELC and WC compliance records. Each year RMA will obtain, between June 1 and July 1, FSA's automated HELC and WC compliance records. Beginning July 1 of the reinsurance year, AIPs may request information on their insured's premium subsidy eligibility status. Information for requesting such information is contained in Appendix III.

It is the person's responsibility to ensure they are in compliance with the HELC and WC provisions. A person who is not in compliance with the HELC and WC provisions, and has exhausted all administrative appeals at the time RMA receives FSA's automated HELC and WC compliance records, will be ineligible for premium subsidy on all policies and plans of insurance for the entire subsequent reinsurance year. See Paragraph 7 for situations when additional time is provided to comply with a conservation or mitigation plan, and Paragraph 8 for exemptions that may apply.

Example: Insured D has had form AD-1026 on file with FSA for several years. On March 9, 2016, NRCS determines Insured D is not complying with the approved conservation plan for their highly erodible land. On May 11, 2016, Insured D has exhausted all administrative appeals and the NRCS determination of a HELC violation is final. FSA updates their HELC and WC compliance records to indicate Insured D is not in compliance with the HELC provisions and all administrative appeals have been exhausted. Insured D will be ineligible for premium subsidy on all policies and plans of insurance for the 2017 reinsurance year.

5 Exception for Persons Who Began Farming for the First Time after June 1

A person must have a completed and signed form AD-1026 on file with FSA on or before June 1 to be eligible for premium subsidy on any policy or plan of insurance the subsequent reinsurance year. However, a person who began farming for the first time after June 1 would not be able to have filed form AD-1026 on or before June 1. Therefore, such persons are provided an exception to the June 1 deadline for filing form AD-1026. A person who began farming for first time after June 1 for this exception is not the same as a "new producer" or a "beginning farmer or rancher."

5 Exception for Persons Who Began Farming for the First Time after June 1 (Continued)

A person (individual or legal entity) that began farming for the first time after June 1, must sign the following applicable certification statement to be eligible for this one-time exception. The certification statement must be signed by the earliest applicable sales closing date (the earliest applicable sales closing date for all their crop policies insured nationwide during the reinsurance year), except for transferees who are the beneficiaries of a Transfer of Coverage and Right to Indemnity or because of death, disappearance, or determined judicially incompetent, in which case the applicable certification statement must be completed by the transferee not later than 60 days after the transfer occurred.

AIPs are not responsible for verifying the person meets the terms of the statement, but the AIP should advise the insured they must sign one of the following statements to qualify for the exemption. The insured is solely responsible for the accuracy of their certification. AIPs must maintain the signed certification statement in accordance with SRA record retention requirements. AIPs are not required to request additional information or documentation to verify the certification. The certification selected by the insured will be communicated to RMA in accordance with procedures contained in Appendix III.

For the purposes of the following statements, “farmed” means engaging in farming activities as an owner, operator, tenant, or sharecropper and excludes others who do not meet these requirements such as persons who solely participated in a farming operation as laborers or equipment operators.

A. Statement A

The following statement applies to either an individual that has not previously farmed prior to June 1 proceeding the applicable reinsurance year or a legal entity in which none the SBIs of the legal entity have previously farmed prior to June 1 preceding the applicable reinsurance year.

“By signing below, I certify that:

(1) I (name of individual or name of legal entity), hereafter referred to as the policyholder, began farming for the first time on (month and day), 20__ ;

(2) The policyholder, if an individual, had no interest, as an individual or legal entity, in any land or commodity subject to the Highly Erodible Land Conservation (HELC) or Wetland Conservation (WC) provisions prior to the date contained in paragraph (1);

(3) The policyholder, if a legal entity, has no substantial beneficial interest holders, as defined in section 1 of the Common Crop Insurance Policy Basic Provisions (7 C.F.R. § 457.8), that farmed prior to the date contained in paragraph (1);

(4) The policyholder had no substantial beneficial interest, as defined in 7 CFR Part 400, in any person who was subject to the HELC or WC provisions prior to the date contained in paragraph (1);

5 Exception for Persons Who Began Farming for the First Time after June 1 (Continued)

A. Statement A (continued)

(5) The policyholder understands the Risk Management Agency and the Farm Service Agency may review historical records to determine prior participation in any USDA program or prior interest in any land, crop or person that was subject to the HELC or WC provisions;

(6) The policyholder understands that if this certification is determined to be false, the policyholder will be subject to sanctions under the policy, including but not limited to voidance of the policy, and the policyholder may be subject to criminal or civil penalties (18 U.S.C. §1006 and §1014; 7 U.S.C. §1506; 31 U.S.C. §3729, §3730 and any other applicable Federal statutes)."

B. Statement B

The following statement applies to a newly formed legal entity in which at least one of the SBIs of the legal entity has farmed prior to June 1 preceding the applicable reinsurance year. For a newly formed legal entity to qualify for this exception, the legal entity must have been created for legitimate businesses purposes.

"By signing below, I, (name of individual), on behalf of (name of legal entity), hereafter referred to as the policyholder, certify that:

(1) At least one substantial beneficial interest holder, as defined in section 1 of the Common Crop Insurance Policy Basic Provisions (7 C.F.R. § 457.8), in the legal entity has farmed prior to signing this certification;

(2) The policyholder began farming for the first time on (month and day), 20__;

(3) The policyholder was organized as a legal entity such as a joint venture, partnership, corporation, etc., for legitimate business reasons such that its assets and liabilities generate economic value regardless of USDA program benefits, and not to avoid legal mandates regarding USDA program benefits including, but not limited to, Highly Erodible Land Conservation (HELC) or Wetland Conservation (WC) provisions;

(4) The policyholder understands the Risk Management Agency and the Farm Service Agency may review historical records to determine prior participation in any USDA program or prior interest in any land, crop or person that was subject to the HELC or WC provisions; and

(5) The policyholder understands that if this certification is determined to be false, the policyholder will be subject to sanctions under the policy(s), including but not limited to voidance of the policy(s), and the policyholder may be subject to criminal or civil penalties (18 U.S.C. §1006 and §1014; 7 U.S.C. §1506; 31 U.S.C. §3729, §3730 and any other applicable Federal statutes)

5 Exception for Persons Who Began Farming for the First Time after June 1 (Continued)

C. Statement C

The following statement applies to either an individual or legal entity that has never participated in a USDA benefit program subject to the HELC or WC provisions, did not participate in Federal crop insurance in the 2015 or subsequent reinsurance years as applicable, and has no prior interest in land subject to HELC or WC provisions. In addition, the person cannot have an SBI or be an SBI who participated in Federal crop insurance in the 2015 or subsequent reinsurance years, or in any other USDA benefit program(s) subject to the HELC or WC provisions. Persons who received notification from the Risk Management Agency or the Farm Service Agency that form AD-1026 may not be on file with USDA are not eligible for this exception.

“By signing below, I certify that:

- (1) I (name of individual or name of legal entity), hereafter referred to as the policyholder, have never participated in any USDA benefit program(s) subject to the Highly Erodible Land Conservation (HELC) or Wetland Conservation (WC) provisions;*
- (2) The policyholder has not participated in the Federal crop insurance program in the 2015, or subsequent reinsurance years prior to signing this certification;*
- (3) The policyholder, if an individual, had no prior interest, as an individual or legal entity, in any land or commodity subject to the HELC or WC provisions;*
- (4) The policyholder has no substantial beneficial interest holder, as defined in section 1 of the Common Crop Insurance Policy Basic Provisions (7 C.F.R. § 457.8) who participated in the Federal crop insurance program in the 2015 or subsequent reinsurance years prior to signing this certification, or in any other USDA benefit program(s) subject to the HELC or WC provisions prior to signing this certification;*
- (5) The policyholder had no substantial beneficial interest, as defined in section 1 of the Common Crop Insurance Policy Basic Provisions (7 C.F.R. § 457.8), in any person who participated in Federal crop insurance in the 2015 or subsequent reinsurance years prior to signing this certification, or who was subject to the HELC or WC provisions prior to signing this certification;*
- (6) The policyholder has not received notification from the Risk Management Agency or the Farm Service Agency that form AD-1026 may not be on file with USDA certifying compliance with the highly erodible land conservation HELC and WC provisions;*
- (7) The policyholder understands the Risk Management Agency and the Farm Service Agency may review historical records to determine prior participation in any USDA program(s), including Federal crop insurance, or prior interest in any land, crop or person who participated in Federal crop insurance or who was subject to the HELC or WC provisions;*
and

5 Exception for Persons Who Began Farming for the First Time after June 1 (Continued)

C. Statement C (continued)

(8) The policyholder understands that if this certification is determined to be false, the policyholder will be subject to sanctions under the policy, including but not limited to voidance of the policy, and the policyholder may be subject to criminal or civil penalties (18 U.S.C. §1006 and §1014; 7 U.S.C. §1506; 31 U.S.C. §3729, §3730 and any other applicable Federal statutes)."

D. Form Standards for Persons Who Began Farming for the First Time after June 1

- (1) "Applicant/Insured Name" (Substantive)
- (2) "Policy Number" (Substantive)
- (3) "Agent's Name" (Substantive)
- (4) "Agent Code Number" (Substantive)
- (5) "Crop Year" (Substantive)
- (6) Required Certification Statement: Insert statement A, B, or C (Substantive)
- (7) "Applicant/Insured's Printed Name, Signature and Date" (Substantive)
- (8) "Agent's Printed Name, Signature, Code Number and Date" (Substantive)
- (9) Privacy Act Statement [(Substantive) See Exhibit 3 in DSSH]
- (10) Nondiscrimination Statement [(Substantive) See Exhibit 4 in DSSH]

Each certification statement must be on a separate form, unless the AIP elects to combine forms. Although a person may select any statement that is applicable, the person must only select one certification statement.

E. The following table provides who may be eligible for this exception.

IF the person can demonstrate they began farming for the first time ...	THEN the person will be eligible for premium subsidy on all policies and plans of insurance ...
after June 1, but prior to the beginning of the subsequent reinsurance year (July 1)	the subsequent reinsurance year, provided the person is otherwise eligible for premium subsidy.
on or after July 1, but before the earliest applicable sales closing date for all their crop policies insured nationwide during the current reinsurance year (except for transferees who have 60 days after transfer occurs)	the remainder of the current reinsurance year provided the person is otherwise eligible for premium subsidy.

Information about identifying and transmitting data regarding persons who meet this exception will be provided in Appendix III.

6 SBI's, Landlord-Tenant Policies, and Transfers of Coverage

A. Reduced Premium Subsidy for Ineligible Substantial Beneficial Interest (SBI) Holder

An SBI is not required to complete an AD-1026 unless they are determined to be an affiliated person by FSA in accordance with FSA's procedures. However, an insured person's premium subsidy will be reduced when any person with a SBI in the insured person is not in compliance with the HELC and WC provisions. The amount of reduction will be commensurate with the SBI held in the insured person. The amount of interest held in the insured person will be determined according to the policy provisions of the insured person.

Compliance with the HELC and WC provisions is determined by FSA and NRCS. Determinations are recorded in FSA's automated HELC and WC compliance records. Each year RMA will obtain, between June 1 and July 1, FSA's automated HELC and WC compliance records. It is the person's responsibility to ensure they are in compliance with the HELC and WC provisions.

Example: Insured E has four SBIs, each with a 25 percent interest. Insured E has a completed and signed form AD-1026 on file and is in compliance with the HELC and WC provisions. However, one of the SBI holders is not in compliance with the HELC or WC provisions. Insured E's premium subsidy amount for that policy will be reduced by 25 percent.

B. Ineligible Landlord or Tenant on a Landlord-Tenant Policy

A person may insure their landlord's or tenant's, as applicable, share on the insured's policy. The application must clearly state the tenant will insure the landlord's share or the landlord will insure the tenant's share. Landlords/tenants are to be reported on the insured's policy as an SBI. The landlord/tenant and the applicable identification number must be listed on the insured person's application even if their share is less than 10 percent.

The landlord or tenant, as applicable, being insured on the other's policy will be reported as a landlord/tenant type SBI on the insured person's policy. The named insured's premium subsidy will be reduced on the policy for which the landlord/tenant is listed as an SBI when the SBI (the landlord or tenant, as applicable, on a landlord-tenant policy) is not in compliance with the HELC and WC provisions. The amount of reduction will be commensurate with the ineligible person's share listed on the application. It is the person's responsibility to ensure they are in compliance with the HELC and WC provisions.

Example: Tenant A insures Landlord B's share of the crop on Tenant A's policy. Landlord B is listed as a SBI with 25 percent share. Tenant A has a completed and signed form AD-1026 on file and is in compliance with the HELC and WC provisions. Landlord B is not in compliance with the HELC or WC provisions. Tenant A's premium subsidy amount for that policy will be reduced by 25 percent.

6 SBI's, Landlord-Tenant Policies, and Transfers of Coverage (Continued)

C. Transfer of Coverage and Right to an Indemnity

A Transfer of Coverage and Right to an Indemnity is used to transfer insurance coverage and the right to any subsequent indemnity from one insured person to another person. The transfer is used when a transfer of part or all of the ownership/share of the insured crop occurs during the insurance period. An approved Transfer of Coverage and Right to an Indemnity grants all rights and responsibilities under the policy to the transferee consistent with the transferor's interest. The transferee and the transferor are jointly and severally liable for any unpaid premium, administrative fee and/or other amounts due on the acreage and share transferred, even if the transfer is released by the transferee.

Both the transferor and transferee must have form AD-1026 on file with FSA on or before June 1 (unless the transferee began farming for the first time after June 1 and signs the applicable certification statement in accordance with paragraph 5), and both must be in compliance with the HELC and WC provisions for either to be eligible for premium subsidy on the portion of the policy that is transferred.

Example: Insured A transfers coverage and right to an indemnity to Insured B. Insured A has had form AD-1026 on file with FSA for several years and is in compliance with HELC and WC provisions. Insured B does not have form AD-1026 on file with FSA and does not qualify as a person that began farming for the first time after June 1. Insured A and Insured B are both ineligible for premium subsidy on that portion of the policy where the transfer occurred (with no impact to Insured A's other policies) because Insured B does not have form AD-1026 on file with FSA.

7 Additional Time to Develop Conservation or Mitigation Plan

A. Persons Subject to HELC for the First Time

Persons subject to the HELC provisions for the first time solely due to the Agricultural Act of 2014 will have five reinsurance years, as provided in 7 CFR part 12, to develop and comply with a conservation plan approved by NRCS before being ineligible for premium subsidy. The additional time to develop and comply with a conservation plan approved by NRCS applies only to persons who were not previously subject to the HELC provisions. The additional time does not apply to any person who had any interest in any land or crop, including an affiliated person (as determined by FSA in accordance with FSA's procedures), which was subject to the HELC provisions before February 7, 2014.

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

7 Additional Time to Develop Conservation or Mitigation Plan (Continued)

A. Persons Subject to HELC for the First Time (continued)

- (1) for persons who have no land with an NRCS highly erodible land determination, the start of the reinsurance year (July 1) following the date NRCS makes a highly erodible land determination and the person exhausts all their administrative appeals, if applicable; or
- (2) for persons who have any land for which a NRCS highly erodible land determination has been made and all administrative appeals have been exhausted, the start of the reinsurance year (July 1) following the date the person certifies compliance with FSA by filing a completed and signed form AD-1026.

A person can certify on form AD-1026 that filing the form represents the first time the person has been subject to the HELC and WC provisions. FSA will review historical FSA records to determine if the person was ever subject to the HELC provisions, including as an affiliated person (as determined by FSA in accordance with FSA's procedures). FSA and NRCS will make all needed determinations and verifications. FSA will provide the needed information to RMA. RMA will provide the person's status to the AIP as specified in Appendix III.

Example: Insured F has not had any interest in any land or crop, including as an affiliated person (as determined by FSA in accordance with FSA's procedures), that was subject to the HELC provisions prior to February 7, 2014. The sole reason Insured F is now subject to the HELC provisions is because of the Agricultural Act of 2014. Insured F checks item 8A on form AD-1026, and FSA determines, based on a review of historical records, Insured F was not subject to the provisions prior to February 7, 2014. Insured F will have five reinsurance years to develop and comply with a conservation plan approved by NRCS, if a conservation plan is needed, before being ineligible for premium subsidies. If Insured F has exhausted all their administrative appeals on February 15, 2016, following NRCS's highly erodible land determination, the five reinsurance years starts July 1, 2016.

B. Persons with Prior HELC Violations

Persons who meet all the following criteria, as determined by FSA, will have two reinsurance years, as provided in 7 CFR part 12, to develop and comply with a conservation plan approved by NRCS before being ineligible for premium subsidy.

- (1) The person was subject to the HELC provisions any time before February 7, 2014.
- (2) Before February 7, 2014, the person stopped participating in all USDA programs subject to the HELC provisions.
- (3) The person would have been in violation of the HELC provisions had they continued to participate in those programs after February 7, 2014.

7 Additional Time to Develop Conservation or Mitigation Plan (Continued)

B. Persons with Prior HELC Violations (continued)

- (4) The person is currently in violation of the HELC provisions.

The additional time to develop and comply with a conservation plan approved by NRCS applies only to persons who meet all the criteria. Such persons must consult with FSA to make necessary updates to their AD-1026. FSA and NRCS will make all needed determinations and verifications. FSA will provide the needed information to RMA.

The two reinsurance years begins the start of the reinsurance year (July 1) following the date the person certifies compliance with FSA by filing a completed and signed form AD-1026.

Example: Insured G was previously participated in USDA programs that were subject to HELC provisions, but stopped participating in all USDA programs subject to HELC provisions in 2012. Insured G would have been in violation of the HELC provisions had they continued to participate in those programs after February 7, 2014, and is currently in violation of the HELC provisions. Insured G consults with the FSA county office to update the AD-1026 by June 1, 2015. Insured G will remain eligible for premium subsidy through the 2017 reinsurance year while they develop and comply with an NRCS-approved conservation plan.

C. Persons Subject to WC for the First Time

A person determined in violation of the WC provisions for converting a wetland after February 7, 2014, will have two reinsurance years after the final determination of violation, including all administrative appeals, to implement all practices in a mitigation plan to remedy the violation before becoming ineligible for premium subsidy, if the person is subject to the WC provisions for the first time solely due to the Agricultural Act of 2014. The additional time to implement all practices applies only to persons who were not previously subject to the WC provisions before February 7, 2014.

Only NRCS can:

- (1) determine if a person converted a wetland after February 7, 2014;
- (2) provide the date such determination is final, including all administrative appeals; and
- (3) determine if a person is implementing all practices in a mitigation plan.

NRCS will provide all needed information to FSA, and FSA will provide it to RMA.

7 Additional Time to Develop Conservation or Mitigation Plan (Continued)

C. Persons Subject to WC for the First Time (continued)

Example: Insured H has not had any interest in any land or crop, including as an affiliated person (as determined by FSA in accordance with FSA's procedures), that was subject to the WC provisions prior to February 7, 2014. The sole reason Insured G is now subject to the WC provisions is because of the Agricultural Act of 2014. Insured G checks item 8A on form AD-1026, and FSA determines, based on a review of historical records, Insured G was not subject to the provisions prior to February 7, 2014. Insured G converted a wetland on March 21, 2015. On August 9, 2015, following the final determination of violation, insured G has exhausted all administrative appeals. Insured G will remain eligible for two reinsurance years beginning with the 2017 reinsurance year to implement all practices in a mitigation plan to remedy the violation.

D. Persons Previously Subject to WC

A person who was subject to the WC provisions before February 7, 2014, and who is determined in violation of the WC provisions for converting a wetland after February 7, 2014, will have one reinsurance year after the final determination of violation, including all administrative appeals, to initiate a mitigation plan to remedy the violation before becoming ineligible for premium subsidy.

Only NRCS can:

- (1) determine if a person converted a wetland after February 7, 2014;
- (2) provide the date such determination is final, including all administrative appeals; and
- (3) determine if a person initiated a mitigation plan to remedy the violation.

NRCS will provide all needed information to FSA, and FSA will provide it to RMA.

Example: Insured G was subject to the WC provisions prior to February 7, 2014. NRCS determines that on August 6, 2015 Insured G converted a wetland. On May 9, 2017, Insured G has exhausted all administrative appeals and the NRCS determination of a wetland conversion violation is final. Insured G has until June 30, 2018, to initiate a mitigation plan to remedy the violation before becoming ineligible for premium subsidies starting with the 2019 reinsurance year.

8 Exemptions

FSA will notify the producer and RMA when any of the following exemptions have been approved. Appendix III contains the process that AIPs will use for determining a producer's status after an exemption has been approved by FSA.

8 Exemptions (Continued)

A. Good Faith Relief for HELC Violations

A person who violates the HELC provisions may remain eligible for premium subsidy if good faith relief is approved by FSA. If FSA approves good faith relief, the person remains eligible for premium subsidy, but USDA program benefits the person would otherwise be eligible to receive for the crop year in violation will be reduced or they may be required to repay an amount determined by FSA.

As a condition of good faith relief, the person must implement the measures and practices necessary to be considered to be actively applying the NRCS approved conservation plan within the period of time required by NRCS. The maximum period of time allowed by statute is one year. A second good faith relief determination cannot be granted on the same violation to extend the one-year maximum period to apply the conservation plan.

Only FSA, in consultation with NRCS, can approve good faith relief.

B. Good Faith Relief for WC Violations

A person who violates the WC provisions may remain eligible for premium subsidy if good faith relief is approved by FSA. No graduated payment reduction is required for FSA to approve a good faith determination for a WC violation.

As a condition of good faith relief, the person must implement all practices in the NRCS approved mitigation plan to remedy or mitigate the violation. The maximum period of time allowed by statute for crop insurance premium subsidy eligibility purposes is two reinsurance years. A second good faith relief determination cannot be granted on the same violation to extend the two-year maximum period to remedy or mitigate the violation.

Only FSA, in consultation with NRCS, can approve good faith relief.

C. Wetland Conversions Impacting Less than Five Acres

In lieu of ineligibility for premium subsidy due to a wetland conversion occurring after February 7, 2014, for wetland conversion that impacts less than 5 acres of an entire farm, if approved by NRCS, a person may pay a contribution to NRCS in an amount equal to 150 percent of the cost of mitigating the converted wetland.

Only NRCS can:

- (1) determine if a person is eligible for this exemption;
- (2) determine the amount the person must pay to meet this exemption; and
- (3) collect the in-lieu of payment from the person.

8 Exemptions (Continued)

C. Wetland Conversions Impacting Less than Five Acres (continued)

A person may use this exemption only one time per farm, as determined by NRCS. NRCS will provide all needed information to FSA, and FSA will provide it to RMA.

D. Wetland Conversion Exemption for Policies Available for First Time

A person may be eligible for premium subsidy on a policy or plan of insurance for an agricultural commodity because of a wetland conversion violation if the:

- (1) policy or plan of insurance became available to the person for the first time after February 7, 2014, as determined by RMA;
- (2) wetland conversion occurred, as determined by NRCS, after February 7, 2014, and before the policy or plan of insurance became available to the person for the first time; and
- (3) the person takes steps necessary, as determined by NRCS, to mitigate all wetlands converted after February 7, 2014, in a timely manner, as determined by NRCS, but not to exceed two reinsurance years.

This exemption applies only to the policy or plan of insurance that becomes available to the person for the first time after February 7, 2014, as determined by RMA, and does not exempt or otherwise negate the person's ineligibility for premium subsidy on any other policy or plan of insurance.

For the purposes of this exemption, a policy or plan of insurance is considered to have been available to the person if after February 7, 2014, in any county in which the person had any interest in any acreage, including as an SBI holder:

- (1) there was a policy or plan of insurance available on the county actuarial documents that provided coverage for the agricultural commodity; or
- (2) the person obtained a written agreement to insure the agricultural commodity in any county.

This exemption does not apply to group or area policies or plans of insurance that cover more than one commodity, such as Whole Farm Revenue Protection and Rainfall and Vegetation Index. Changing, adding, or removing options, endorsements, or coverage to an existing policy or plan of insurance will not be considered as a policy or plan of insurance being available for the first time to a person. Information about identifying and transmitting data regarding persons who meet this exception will be provided in Appendix III.

8 Exemptions (Continued)

E. Tenant HELC or WC Planting Exemption – Landlord Refusal

This exemption:

- (1) applies only to tenants, operators, or sharecroppers;
- (2) applies only to HELC violations and violations for planting or producing an agricultural commodity on a wetland converted after February 7, 2014; and
- (3) when applied, results in a reduction in the amount of premium subsidy on all policies and plans of insurance of the tenant/operator/sharecropper rather than ineligibility for all premium subsidy on all policies and plans of insurance.

To be eligible for the exemption, the tenant/operator/sharecropper must establish, to FSA's satisfaction, that:

- (1) a conservation or mitigation plan, as applicable, approved by NRCS was obtained for the land;
- (2) the landlord refuses to allow the tenant/operator/sharecropper to comply with the plan;
- (3) the tenant/operator/sharecropper made a good faith effort to meet the HELC or WC, as applicable, provisions;
- (4) the lack of compliance is not part of a scheme or device to avoid compliance with the HELC and WC provisions, as determined by FSA; and
- (5) the tenant/operator/sharecropper actively applies the practices and measures of the approved conservation or mitigation plan, as applicable, which are within their control.

Only FSA, in consultation with NRCS, can determine whether a person meets the requirements for this exemption. If FSA approves a person for this exemption, the amount of premium subsidy on all the person's policies and plans of insurance will be reduced instead of the person being ineligible for all premium subsidy on all policies and plans of insurance. The percentage reduction will be determined by comparing the total number of cropland acres on the farm on which the violation occurred to the total number of cropland acres on all farms in which the tenant/operator/sharecropper has an interest, as determined by FSA.

The farms and cropland acres used to determine the premium subsidy reduction percentage will be the farms and cropland acres of the tenant/operator/sharecropper for the reinsurance year in which they are determined ineligible. However, the percentage reduction will be applied to all policies and plans of insurance of the tenant/operator/sharecropper in the reinsurance year subsequent to the reinsurance year in which they are determined ineligible.

8 Exemptions (Continued)

E. Tenant HELC or WC Planting Exemption – Landlord Refusal (continued)

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

FSA will notify RMA when a person meets this exemption and provide the necessary information for determining the percentage reduction.

F. Landlord Exemption - HELC or WC Planting Violation

This exemption:

- (1) applies only to landlords/landowners;
- (2) applies only HELC violations and violations for planting or producing an agricultural commodity on a wetland converted after February 7, 2014; and
- (3) when applied, results in a reduction in the amount of premium subsidy on all policies and plans of insurance of the landlord/landowner rather than ineligibility for all premium subsidy on all policies and plans of insurance.

This exemption will not apply if the:

- (1) production of an agricultural commodity on highly erodible land or on a converted wetland by the tenant/operator/sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant/operator/sharecropper and such agreement was entered into after February 7, 2014; or
- (2) landlord has acquiesced in such activities by the tenant/operator/sharecropper.

Only FSA, in consultation with NRCS, can determine whether a person meets the requirements for this exemption.

If FSA approves a person for this exemption, the amount of premium subsidy on all the person's policies and plans of insurance will be reduced instead of the person being ineligible for all premium subsidy on all policies and plans of insurance. The percentage reduction will be determined by comparing the total number of cropland acres on the farm on which the violation occurred to the total number of cropland acres on all farms in which the landlord/landowner has an interest, as determined by FSA.

The farms and cropland acres used to determine the premium subsidy reduction percentage will be the farms and cropland acres of the landlord/landowner for the reinsurance year in which they are determined ineligible. However, the percentage reduction will be applied to all policies and plans of insurance of the landlord/landowner in the reinsurance year subsequent to the reinsurance year in which they are determined ineligible.

8 Exemptions (Continued)

F. Landlord Exemption - HELC or WC Planting Violation (continued)

If the landlord/landowner and tenant/operator/sharecropper are insured under the same policy, the landlord/landowner will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.

FSA will notify RMA when a person meets this exemption and provide the necessary information for determining the percentage reduction.

9 Requesting Review of Information

A person's eligibility for premium subsidy is based on information obtained from FSA and NRCS. AIPs can contact RMA when a policyholder questions whether there has been a transmission or processing error that may have resulted in an incorrect determination of the person's premium subsidy eligibility. However, producers and AIPs may not dispute or appeal to RMA any determination of compliance made by FSA or NRCS. Producers should dispute or appeal such compliance determinations directly with FSA or NRCS, as applicable. Insureds cannot seek arbitration or legal proceedings under the crop insurance policy because of a determination of ineligibility of premium subsidy.

To request a review when a policyholder question whether there has been a transmission or processing error, the AIP must provide all the following to RMA at Conservation@rma.usda.gov.

- (1) The policyholder name (First, Last, Business, etc. as applicable) used to file form AD-1026 with FSA.
- (2) The AIP Policy Producer Key or the Policy Number (7 digit number, use leading zeros if less than 7) for the person from the P10 Record. Do NOT send the policyholders tax identification number.
- (3) The FSA county office where form AD-1026 is filed.
- (4) The date the policyholder signed form AD-1026, if known (if the exact date is unknown provide an approximate date and denote it as such).
- (5) A brief description of why the policyholder believes the information is erroneous and any other facts/context that could assist in researching the issue.

Once all information is provided, RMA will perform a review of the applicable data for potential errors in interagency data sharing and data processing. Once the review is complete, the AIP will be notified of the results and any applicable changes or actions taken by RMA, FSA or NRCS.

9 Requesting Review of Information (Continued)

Example: Insured I is informed they are not eligible for premium subsidy because they do not have form AD-1026 on file with FSA. Insured I believes they do have a properly completed and signed AD-1026 on file with FSA. Insured I provides their AIP their name, county office where they filed form AD-1026, date they signed form AD-1026, and a short description of why they believe the data RMA has is erroneous. The AIP then contacts RMA at Conservation@rma.usda.gov, and requests RMA review the applicable records received from FSA and NRCS. RMA will review the applicable data and notify AIP of the findings and any actions or changes made to the policyholder's data, if applicable.

Exhibit: The AIP may provide the following information to persons who are not listed in RMAs database as having an AD-1026 on file with FSA.

RMA records indicate that based on the information obtained from the Farm Service Agency (FSA), you do not have an AD-1026 on file with FSA. The 2014 Agricultural Act introduced a requirement that a form AD-1026 must be filed with FSA on or before June 1 prior to the reinsurance year (begins July 1), in order to be eligible for premium assistance for Federal crop insurance. If you did not file an AD-1026 with FSA prior to June 1 you will not be eligible for premium assistance for Federal crop insurance unless you began farming after June 1 (consult your insurance agent for more information on this exemption) or you qualify for a relief exemption as determined by FSA. You are encouraged to consult with your local FSA county office as soon as possible to verify if you have filed an AD-1026 or to see if you qualify for a relief exemption. If you believe you have filed an AD-1026 with FSA on or before June 1, you may request through your insurance provider for RMA to conduct a review in accordance with RMA procedures to determine if there has been a transmission or processing error that may have resulted in your status in RMAs records incorrectly indicating the form AD-1026 is not on file with FSA. Information needed for this review includes:

- (1) The name used to file the form AD-1026 with FSA;
- (2) Your insurance provider's Policy Producer Key or the Policy Number (7 digit number, use leading zeros if less than 7) for the P10 record (Your insurance provider will provide this information);
- (3) The FSA county office where your form AD-1026 was filed;
- (4) The date you signed the form AD-1026, if known, or if unknown an approximate date denoted as such;
- (5) A brief description of why you believe the information is incorrect and any facts/context that could help in researching the issue.

9 Requesting Review of Information (Continued)

This review process should be initiated as soon as possible so you can make an informed decision about purchasing your crop insurance policy based on your eligibility for premium assistance. If allowed by the Special Provisions, initiating this review process 15 days or less after the sales closing date and attempting to reconcile any discrepancy will allow you to cancel your policy up to 45 days after the cancellation date if RMA's review results in confirmation that you do not have a valid AD-1026 on file with FSA.