Written Questions Submitted to USDA after WGs' Conservation Compliance Webinar

Questions sent to FSA

1) *Below are a series of scenarios which we would like to put forward to explore concepts in more detail.*

Scenario 1: (as asked during webinar)

My brother and I each have our own farms but we also co-own a 3rd farm. In that case if any of those 3 farms have crop insurance would all 3 farms need to be in compliance (and fill out paperwork)? Does business structure matter in the example?

Webinar answer: All 3 farms need to be in compliance.

FSA's more detailed answer: If the co-owned farmed is insuring (the partnership is requesting the benefit), then each of the brothers' farms need to file AD-1026 and certify to conservation compliance, regardless if they carry crop insurance, because each of the brothers are first level members of the entity.

However, if Brother A and B make up A & B partnership. If either Brother A or B is the only one insuring their individual farm, they as an individual are the only one of the three entities seeking a benefit, then only the Partnership is an affiliate that is subject to conservation compliance. The other brother, not requesting a benefit, does not have to file AD-1026, but the Partnership does (even though they are not requesting a benefit).

Number 7 of the appendix further illustrates:

The one filing for benefit is A & B Partnership (the only entity of the three seeking a benefit). The first level members are Brother A and Brother B. Both bothers have a farming interest as defined by 6-CP. Both bothers must file AD-1026 and are subject to conservation compliance. It really does not matter what business structure the co-owned farm is under. Any of the various entities will likely subject both brothers to conservation compliance.

Brother B insures as an individual. Brother B, as individual, is the only entity of the three seeking a benefit. Number 7 of the appendix tells us the partnership must also file an AD-1026 and certify to conservation compliance as an affiliate subject to conservation compliance to the one seeking the benefit. However Brother A is an affiliate to the partnership not an affiliate of Brother B seeking benefits. If the partnership is not seeking a benefit, Brother A is not subject to conservation compliance.

Scenario 2 (not asked on webinar): I own a cabbage and leafy green operation. My brother owns a melon operation. We co-own a tomato operation.

If we buy crop insurance for the tomato (co-owned farm) then would both of us individually (leafy green and melon) need to be in compliance (obviously the tomato operation has to be in compliance)?

FSA answer: Following number 7 in the appendix 7, whatever type of entity the co-owned farm is under is the one seeking benefit. Each of the brothers are first level member of the entity, each of the brothers has a farming interests as defined by 6-CP. Each of the brothers are affiliates subject to conservation compliance to the producer requesting benefits.

What if I buy crop insurance for cabbages (if it existed in CA)? While clearly my own leafy green operation would need to be in compliance, would our co-owned tomato operation need to be in compliance too (even if we didn't buy crop insurance on it)? Would my brother's melon operation need to be in compliance if I bought cabbage insurance?

FSA response: Also very similar to discussion in scenario 1. Yes the co-owned tomato operation would need to be in compliance. You are the one seeking benefit as an individual. Following number 7 in the appendix any of those various entities that make up the co-owned tomato operation would be one that you have an interest in, making it an affiliate subject to conservation compliance. The affiliate has a farming interest. It does not matter that it is not seeking a benefit.

However, your brother is not an affiliate to you. Your brother is an affiliate to the co-owned tomato operation and you are an affiliate of the co-owned tomato operation. But the co-owned tomato operation is not seeking benefit. Since the co-owned tomato operation is not seeking benefit the brother is not subject to conservation compliance. He is thus an affiliate of the affiliate. Following number 7 in the appendix conservation compliance is not taken to that level.

Scenario 3 (not asked on webinar): If a large grower-shipper buys crop insurance for the production that they grow on land that they own (note its clear ALL their own ground has to be in compliance) does that mean the network of perhaps hundreds of growers who grow and market product through them ALSO need to be in compliance?

FSA response: It's likely the large grower-shipper is a corporation. In the above scenario they own land and seek crop insurance. They are the ones seeking the benefit. Following number 7 in the appendix all first level shareholders with more than 20% interest in the corporation that have a farming interest as owner, operator, tenant, or sharecropper on any farm or undeveloped land are affiliates subject to conservation compliance.

2) *If I'm a contract grower, does that trigger compliance for the person for whom I grow?*

FSA response: Contract growing in itself is not an affiliation that subjects one to conservation compliance. Conservation compliance is tied to the individual or the entity seeking benefits along with their affiliates, as outlined in number 7 of the appendix, with farming interests as owner, operator, tenant, or sharecropper on any farm or undeveloped land. Also note that the rules for determining if a person has a 'substantial beneficial interest' in an insurance context and the rules for determining if a

person is an affiliated person are different. A person can have a substantial beneficial interest in an insurance context but not be an affiliated person to the insured.

3) *It is our understanding that owning a share in a crop (while a beneficial interest) does NOT trigger compliance since affiliated party definitions are linked to ownership structure of the business in question. Likewise we understood that if a grower signed a contract at the beginning of the year that they will grow x cartons of lettuce receiving y price from the shipper that entity is a "contract grower" for the shipper who owns NO interest in the growers farm thus no trigger for conservation compliance? Can you elaborate on the answer given and explain the difference/similarity between terms?*

FSA response: Likely the one growing the crop is the one purchasing the insurance, the individual or entity that is seeking the benefit. Following number 7 in the appendix if the one seeking benefits is an individual and also has an interest in the shipping company, with a make-up of one of the various entities, or more than 20% share in the shipping company as a corporation, then any of those business relationships are affiliates to the individual. But they are only affiliates subject to conservation compliance if they are listed as owner, operator, tenant, or sharecropper on any farm or undeveloped land.

If the one growing the crop and insuring the crop is one of the various entities or a corporation and the shipping company is another entity or corporation then they are not an affiliate subject to conservation compliance (see number 7 of the appendix, first level members, and first level shareholders with more than 20% interest).

4) Based on the Conservation Fact Sheet dated October 2014, AD1026, AD1026B, AD1026C, and Compliance Frequently Asked Questions (FAQ) we have some questions to walk through:

I. Strawberry Grower Corporation has a crop insurance policy
   A. Corporation has 4 interest holders with 25% percent share equally
      1. 1 interest holder is a large lettuce shipper, cooler, and grower all under the same corporation

In this example it is our understanding that the interest holder with the shipper, cooler, grower status will need to complete the AD-1026, because the growing operation is the same corporation and tax identification number as the cooler, and shipper operation.

FSA response: That is correct. The corporation that is a lettuce grower is a first level member with more than 20% interest to the one seeking benefit (The Strawberry Grower Corporation) and they have a farming interest.

II. Strawberry Grower Corporation has a crop insurance policy
   A. Corporation has 4 interest holders with 25% percent share equally

1. 1 interest holder is a large strawberry shipper, cooler, and grower; however, the growing operation is a separate entity not the same corporation name or tax identification and not part of the underlying corporation.

*It is our understanding that in this example the interest holder with the shipper, cooler, grower status will be split and will **not** need to complete the AD-1026, because the growing operation is a **different corporation and tax identification number** as the cooler, and shipper operation. This is so because the shipper / cooler is a non-farming entity and they too **do not** need to complete the AD-1026.*

FSA response: That is correct, only affiliations who are first level member with more than 20% interest, with farming interests (owner, operator, tenant, or share cropper), need to file AD-1026.

III. Strawberry Grower Partnership has a crop insurance policy
   A. Partnership has two partners with equal 50% ownership
      1. Partner A is an individual with a farming interest who provides 100% management and labor
      2. Partner B is a corporation who is a large Grower / Shipper / Cooler who is a 50% partner as this partner provides 100% of the capital for the operation
         a. Partner B is also partners with the other growers with the exact same configuration

*It is our understanding that in this example Partner B **will** need to complete the AD-1026 for not only his first level interest with original Strawberry Grower Partnership. However, the other strawberry growers (the 2a entities) won't have to comply if they (or partner B) are not participating in crop insurance as they are not first level to the original Strawberry Grower Partnership, only Partner B is first level.*

FSA response: That is correct (with slight addition above).

5) AD1026 Part D – Certification of Compliance states, "a revised Form AD-1026 must be filed if there are any operation changes or activities that may affect compliance with the HELC and WC provisions. I understand that failure to revise Form AD-1026 for such changes or activities that may result in ineligibility for certain USDA program benefits or other consequences." Question: Does 'change in operation' reference a new lease of ground?

FSA response: A new AD-1026 is required if there is a change in the operation in which the producer will be answering "yes" to the questions in number 6 and 7 of the AD-1026. If the new lease of ground does not trigger "yes I will be producing an agriculture commodity on land for which an HEL determination has not been made" or "yes" to any of the wetland questions, in 7 A or 7 B, a new form AD-1026 is not required.

Producers can determine if a determination has been made with the owner that has a copy of the NRCS-CPA-026e that identifies all the fields that are NHEL or HEL or have any wetland calls completed. If the owner does not have this information it is available at the local NRCS office. If all fields for which a commodity crop is planned to be grown on have a highly erodible land determination completed (HEL or NHEL) the producer does not need to file a new AD-1026. They do however have to update the conservation plan with NRCS for any fields that may be HEL.

Likewise a producer does not have to complete a new AD-1026 for any wetland determinations unless they plan any of the drainage activities listed in 7 A or 7B of the AD-1026. Any previous wetland determination completed (identified on form NRCS-CPA-026e) stay with the land and apply to the new lessee.

> Many growers in crop rotation will go to the FSA Office complete the form with current tracts of land in production, then they will rotate to other vegetable crops next year and/or bring back or pick up new leases. Can we get clarification on this? Would the grower need to complete a new form as there will be new ground needing a possible determination every single year?

FSA response: The grower needs to complete a new form AD-1026 any time they plan on producing an agriculture commodity on land for which a highly erodible determination has not been made or they plan on doing any of the wetland activities in 7 A, or B, or C.

Highly erodible determinations are not related to the crop being planted. Once fields are determined as highly erodible or not highly erodible the determination remains with the field regardless of the crop grown.

However, the conservation plan with NRCS on highly erodible land that are planted to agriculture commodities (any crop planted and produced by annual tilling of the soil, including one-trip planters or sugar cane) is related to the crop being planted. However, NRCS takes into consideration an entire multi-year crop rotation when developing conservation plans so that plans do not need updating every year.

Questions sent to NRCS

1) For growers that have to do compliance we want to ensure the engagement is as easy as possible. First hurdle of course is determining whether there is an obligation (ie. whether someone is producing a covered commodity). Thereafter we need to determine whether someone producing a covered commodity is producing that commodity on covered land either land that is HEL or Wetland. We want to focus now on the second element. The FAQs (#2.G) indicate the ability to use remote technology to determine whether someone has HEL or wetlands. Recently the NRCS chief explained that NRCS has computer programs that

can expedite wetland determinations/delineations, and as I understand it the same technology can be used for HEL. Can you explain this issue more?

NRCS response: NRCS wherever possible takes advantage of technology to streamline the HEL and wetland determination process in order to decrease the resource and time burden of both the agency and the producer. HEL determinations can often be done completely from the office, without a field visit. For wetland determinations, the need for a field visit is more likely, but every opportunity to gather and analyze off-site resources and data is used in order to streamline the process.

2) Let's take this one step further and assume a producer is growing a covered commodity on covered ground, in that scenario growers will be concerned about what they need to do and the cost associated with that as compared to the benefit provided by crop insurance. Many producers of course have conservation plans already in place, as one example, in CA there is an irrigated lands program already in place in some areas that requires certain conservation steps be taken. While existing plans may need to be improved, it is our assumption that USDA will not be forcing farmers to "start from scratch"; e.g. 'your existing plan covers 8 out of 10 necessary factors for HEL, and we at NRCS after reviewing your plans will provide technical assistance to create practices that cover the other two elements that are missing'. Is our assumption correct?

NRCS response: NRCS will strive to minimize the burden on producers whenever possible while fulfilling the obligations of the Highly Erodible Lands program in your example above. Some producers may have existing conservation plans which may meet or exceed the requirements under HEL. In these cases, no further action other than an analysis of the current plan will be necessary. In other cases, slight modifications or additions to the conservation plan may be necessary. If you have an existing conservation plan we recommend you discuss the plan with the local NRCS staff to determine whether the plan is sufficient to meet USDA's conservation plan requirements.