

August 6, 2014

The Honorable Tom Vilsack  
Secretary  
U.S. Department of Agriculture  
1400 Independence Ave, S.W.  
Washington, D.C. 20250

Dear Secretary Vilsack:

I write to request your attention to a number of issues related to the implementation of conservation compliance requirements for crop insurance and to request information regarding their status in rulemaking. Specifically, I urge you to make sure the rules are implemented in the clearest way possible and in the least burdensome fashion to farmers.

As you are aware, the Upper Midwest has experienced multiple wet planting seasons in the previous five years. In order for farmers to be in a strong position to understand how water can be managed on their farms in a manner consistent with conservation compliance requirements, it is critical that the policy is implemented in a workable fashion and that farmers have a clear understanding of what actions are allowed under the new conservation compliance requirements created by the legislation.

During the drafting of the Farm Bill, I worked with my colleagues in the Senate Agriculture Committee to mollify concerns related to an initial proposal to require conservation compliance as a condition for full participation in the Federal Crop Insurance Program. While I opposed the inclusion of a policy to link conservation compliance with crop insurance, I also recognized that – in the event conservation compliance was included in the Farm Bill – it was important that improvements were made to proposal to make them workable for farmers in North Dakota. These alterations to the proposal, which were included in the manager's amendment to the Farm Bill that was passed unanimously by the Senate Agriculture Committee, address some of the concerns related to increased conservation compliance requirements that were relayed to me by farmers in North Dakota. Among these improvements are:

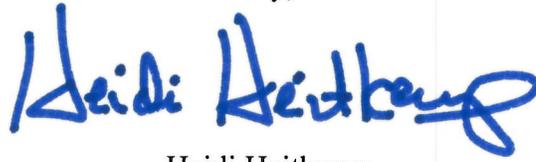
1. **Self-certification:** Under the conservation compliance policy, it is important that farmers are able to self-certify compliance for full participation in the Federal Crops Insurance Program using 1026-A forms as is currently done for participation in the commodity programs. The intent of Congress for use of the 1026-A form for self-certification was made clear in the manager's statement of the conference report.
2. **Forward Looking Policy:** The conservation compliance policy for crop insurance premium assistance is forward looking only: no claw back provisions are included that would require payback of the federal share of insurance premiums for prior violations. Specifically, violations based on wetlands conversions that took place prior to the date of enactment for

the 2014 Farm Bill (February 7, 2014) are explicitly not to be the basis for ineligibility. Violations that are based on wetlands conversions that have taken place after the date of enactment of the 2014 Farm Bill will require growers to restore or mitigate wetlands in order for participation to be restored.

3. Sufficient Time to Restore Compliance: Farmers will be allowed to exhaust all appellate rights before becoming ineligible for premium assistance in the Federal Crop Insurance Program. If a farmer is determined to have violated conservation compliance following the appeals process, they will have until the next reinsurance year to restore eligibility. Under a previous iteration of the policy, the premium subsidy reduction could have applied to the year of the violation.
4. Renter Protections: Renters are held harmless on their entire operation for violations based on conversions by landowners that are due to no fault of the renter and that the landowner refuses to remedy. If a producer rents acres from a land owner and the land owner is determined to have violated conservation compliance, the renter is not liable to restore the wetland and does not pay penalties for the violation. Under this provision, only the rented acres in question are ineligible for receiving a crop insurance premium subsidy until the land owner has restored or mitigated the drained wetland.
5. Payment Option: The 2014 Farm Bill provides growers with the option to pay USDA an amount equal to 1.5 times the cost of mitigation to restore compliance for a violation based on a conversion of five acres or less on a farm. This provision puts farmers in a strong position to reach compliance when a conversion has taken place, while also providing added benefits to habitat restoration by increasing resources involved in conservation efforts.
6. Good Faith Protections: Strong “Good Faith” protections are included in the policy. If a grower is found to have acted in good faith with regard to a conversion found to violate the conservation compliance requirements for wetlands, the grower will have two reinsurance years to begin mitigation or restoration in order to restore compliance. During this two-year period, the grower will remain eligible to continue receiving crop insurance premium assistance with no penalty.
7. Timely Evaluation Protections: If a grower submits paperwork to USDA notifying them of actions taken on their land in accordance with conservation compliance requirements and USDA does not process the evaluation in a timely manner, the grower will be held harmless for violations that have occurred absent guidance from USDA. The definition of “timely manner” will be determined by USDA with input from policymakers and stakeholder groups.

Recognizing these provisions were included in the 2014 Farm Bill, I look forward to hearing how USDA is factoring in these provisions as it develops the rules to implement conservation compliance requirements for the Federal Crop Insurance Program. Thank you for your consideration of this request. I appreciate your dedicated service to American agricultural and rural communities, and look forward to working with you on issues related to Farm Bill implementation going forward.

Sincerely,

A handwritten signature in blue ink that reads "Heidi Heitkamp". The signature is written in a cursive, flowing style.

Heidi Heitkamp  
United States Senator

Cc: Krysta Harden, Deputy Secretary, U.S. Department of Agriculture  
Robert Bonnie, Under Secretary for Natural Resources and Environment  
Michael Scuse, Under Secretary for Farm and Foreign Agricultural Services  
Juan Garcia, Administrator, Farm Services Agency  
Jason Weller, Chief, Natural Resources Conservation Service