

National Sustainable Agriculture Coalition

January 23, 2009

Mr. Tim Hoffman, Director
Product Administration & Standards Division
USDA Risk Management Agency
Beacon Facility, Stop 0812
9240 Troost Ave.
Kansas City, MO 64131-3055

Delivered by e-mail: DirectorPDD@rma.usda.gov

RE: 2008 Farm Bill Interim Rule: 7 CFR Parts 402, 407 and 457. Federal Register, vol. 73 at pp. 70861-70865 (Nov. 24, 2008).

Dear Mr. Hoffman:

I am submitting these comments on behalf of the National Sustainable Agriculture Coalition (NSAC) on the Interim Final Rule for changes mandated by Section 12020 of the Food, Conservation and Energy Act of 2008 to the federal crop insurance program. The Coalition represents family farm, rural, and conservation organizations from around the U.S. that share a commitment to federal policy that promotes sustainable agriculture production systems, family-based farms and ranches, and healthy, vibrant rural communities.

NATIONAL SUSTAINABLE AGRICULTURE COALITION COMMENTS

1. General comment on congressional intent of Section 12020: Native grassland habitats in the U.S., including those of the U.S. Prairie Pothole Region, are among the most threatened habitats in the country. The greatest decline in U.S. bird populations has been in the grassland guild of birds. The Managers Statement on Section 12020 of the 2008 Farm Bill emphasizes the intent to prevent the availability of crop insurance as an incentive for farmers to convert untilled grassland habitat to annual crop production. The statement also emphasizes the reauthorization of the Grassland Reserve Program, incentives in the Environmental Quality Incentives Program and other farm bill program incentives to encourage farmers and ranchers to conserve the nation's grasslands. In light of this significant interest in protecting grassland habitats, NSAC is providing recommendations for revising the FCIC regulation implementing Section 12020 to enhance the protections for grassland habitat.

2. "Native Sod" definition in 7 CFR § 407.9(1) and § 457.8(1). Section 12020 of the 2008 Farm Bill defines "native sod" by two factors, the type of plants on the land and the production history of the land as that which has "... never been tilled for the production of an annual crop as of the date of enactment of the subsection."

With regard to the type of plants on the land, the regulatory definition of "native sod" should be clarified to ensure that the modifier "native" in the sentence "Acreage on which the plant cover is

composed principally of *native* grasses, grass-like plants, forbs or shrubs suitable for grazing or browsing” is limited to modifying the word “grasses”. This would ensure that land which supports untilled habitat for native species which are not the principal vegetation on the land is protected from annual crop production with subsidized crop insurance. The regulation should provide protection for the widest array of untilled grassland habitats, including those with native grasses and native and non-native grass-like forbs, shrubs and other grassland plants.

The regulatory definition of “native sod” should also clarify that land which has been “tilled” for purposes other than annual crop production can still be defined as “native sod.” An example would be land areas that have been tilled as part of establishing a firebreak system without the purpose of planting an annual crop.

3. Definition of the term “tilled for production of an annual crop” in the insurable acreage provisions of 7 CFR § 407.9(3) and § 457.8(9): Section 12020 makes native sod that has been “tilled” for the production of an annual crop after the date of enactment of the 2008 Farm Bill ineligible for crop insurance during the first five years of planting. NSAC recommends that the regulation be revised to include a broad definition of the term “tilled” that would include all forms of tillage, including the conservation tillage method referred to as “no-till”, the use of agricultural chemicals for annual crop production and other activities. The key issue is that an annual crop planted on “native sod” should be subject to the crop insurance ineligibility provisions of sodsaver, no matter what techniques are used to establish that annual crop.

4. Definition of “Prairie Pothole National Priority Area” in 7 CFR § 407.9(1) and § 457.8(1): The regulation defines the region where the Section 12020 restrictions may apply, the Prairie Pothole National Priority Area, as counties included on a map on the Risk Management Agency website. We recommend that the regulation list the specific counties within in each state which are included within Prairie Pothole National Priority Area and provide the website for the map as a reference tool.

5. Election by the Governor of a Prairie Pothole National Priority Area to make Section 12020 effective in the state: Section 12020 becomes effective in a state with counties in the Prairie Pothole National Priority Area only if the state Governor elects to make Section 12020 effective. NSAC recommends that if a Governor makes this election, the conditions of Section 12020 on federal crop insurance eligibility remain in effect for the term of the 2008 Farm Bill. Section 12020 has no provision for a subsequent opt-out of sodsaver. Therefore, we recommend that the regulation make clear there is no subsequent opt-out opportunity for the state until Congress revisits the issue in the next Farm Bill. This regulatory certainty about a one-time “election” option will provide the greatest certainty to a state’s farmers in making decisions about planting, land leasing, etc. It will also allow the Section 12020 sodsaver provision to apply on a relatively large geographic scale for a sufficient time to generate information on the effects of limiting crop insurance as an incentive for grassland conversion.

We further recommend that USDA make special efforts in states where Governors choose to opt into sodsaver to provide outreach and education for farmers and ranchers about grass-based farming systems. USDA should also make special efforts to inform farmers and ranchers in the Prairie Pothole National Priority Area about financial incentives and technical assistance in the

Conservation Stewardship Project, EQIP, CRP, continuous CRP and other conservation programs to establish conservation systems and practices that conserve grasslands and protect wildlife dependent on grassland habitats. One option open to USDA is to direct additional EQIP funds for grass-based livestock systems to states with Governors who opt into the sodsaver provision. This could also help meet the requirement that 60 percent of EQIP funding be used for livestock.

6. Timing of a Governor's Decision to Opt into Sodsaver: The preamble to the regulation, Federal Register vol. 73 at p. 70862, recommends that Governors be encouraged to elect to opt into sodsaver by February 15, 2009 (30 days before the March 15, 2009, sales closing date for the 2009 crop year) so that insured producers may make timely and appropriate decisions with respect to their farming operations. This is a reasonable recommendation.

But NSAC is concerned by the statement in the preamble that any producer who insured native sod that had been tilled after enactment of the 2008 Farm Bill, but before the Governor has opted into the sodsaver provision, may be required to remove the acreage from the insurance policy and refund any premium for such acreage.

We recommend, instead, that the regulation set February 15 as the latest date by which a Governor may elect to opt into sodsaver with effect in that crop year and subsequent crop years but that after February 15, a Governor may elect to opt in for the next crop year and subsequent crop years. Under this proposed provision, a Governor may opt into sodsaver by February 15, 2009 which will make ineligible for crop insurance annual crops produced on native sod in the crop year 2009 and subsequent crop years. If the Governor opts into sodsaver after February 15, 2009, the sodsaver ineligibility provision would apply to farmers who broke out native sod AFTER MAY 22, 2008, in crop year 2010 and the next four crop years.

7. Tightening the exemption for tracts of 5 acres or less: Section 12020 provides a de minimis acreage exemption from sodsaver for tracts of 5 acres or less. NSAC recommends that the regulation ensure that large tracts of grassland are not converted 5 acres at a time. The regulation should provide that the number of acres in tracts of five acres or less tilled for annual crop production, which become contiguous, will be added together. If the total amount of acres exceeds five acres, sodsaver will apply to the entire amount of contiguous acreage.

8. Undertake analysis and develop incentives in federal farm programs for the loss of grassland habitats: The Managers Statement on Section 12020 in the 2008 Farm Bill Conference Report states the USDA should undertake a study on the influence of the crop insurance program on the conversion of native sod to crop production. The study should also compare the sufficiency of grazing coverage available through crop insurance or non-insurance assistance in comparison to the economics of crops planted on converted grassland.

The Managers further stated that they expect USDA to respond to the concerns and recommendations of a 2007 General Accountability Office (GAO) report entitled *Farm Program Payments Are an Important Factor in Landowners' Decisions to Convert Grassland to Cropland* (GAO 07-1054)(<http://www.gao.gov/new.items/d071054.pdf>). The GAO report recommends that USDA track annual conversion of grassland to cropland and conduct a study on the

relationship between farm program payments, including crop insurance, and land conversion. NSAC urges USDA to undertake this study as the programs of the 2008 Farm Bill, including the sodsaver provision, are implemented.

9. Make more systemic change in final rules: Significant conversion of grassland habitats to agricultural row crop production is not only an issue in the Prairie Pothole National Priority Area, but is also an acute issue outside of the Area. It is shortsighted for RMA to continue to subsidize the destruction of ecologically important grasslands. NSAC urges USDA to implement the 2008 Farm Bill sodsaver provision for the Prairie Pothole Area with the changes we describe above. We further urge USDA to adopt additional changes as part of the final rule that would reduce or eliminate taxpayer subsidies that encourage landowners to destroy native prairie and other important grasslands, regardless of location. One key administrative action would be to amend the “added land” provision of crops insurance rules to require land without production crop history prior to 2009 that is subsequently planted to a crop to establish a full four to ten year actual production history prior to becoming eligible for insurance.

In conclusion, the nation’s native grasslands are threatened by a federal farm program that bestows the full combination of taxpayer provided crop insurance, disaster payments, and price and income supports when grass is converted to crops. Landowners who maintain native grasslands receive none of these. USDA should be working towards an ultimate goal of restoring significant grasslands as well as preserving the remaining uncultivated grasslands.

Thank you for considering NSAC’s comments.

Sincerely,

Martha L. Noble

Martha L. Noble,
NSAC Senior Policy Associate