



September 2, 2014

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Submitted Via Federal eRulemaking Portal: <http://www.regulations.gov>.

RE: Comments on Docket Number FCIC-14-0005, General Administrative Regulations; Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions, 79 Fed. Reg. 37155 (July 1, 2014)

On behalf of the organizations listed below, I am submitting these comments on USDA's Interim Rule for Federal Crop Insurance specifically as it relates to crop production on native sod.

During the three years leading up to passage of the 2014 Farm Bill, our organizations worked closely with Members of Congress to develop and secure a landmark "Sodsaver" provision to reduce incentives for the conversion of native grasslands to cropland. While we hope the new policy will eventually be applied nationwide, the provision currently applies to six states – South Dakota, North Dakota, Minnesota, Iowa, Montana, and Nebraska. To conserve remaining native prairie in these states, it is critical that this rule be implemented to the fullest extent of the law, while maintaining Congressional intent.

We submit the following comments for your consideration.

1) We recommend that USDA set up a process by which the Farm Service Agency (FSA) or Risk Management Agency (RMA), rather than crop insurance agents, validate evidence presented by a producer to document that his or her land has been tilled.

The interim rule sets forward processes for determining whether or not land is classified as native sod and would fall under the purview of Sodsaver. Under the law, land is classified as native sod if it has never been tilled before. Under the interim rule, crop insurance agents would make determinations about what classifies as native sod and what qualifies as evidence that land has been tilled, based in part on criteria provided by RMA. This would not only unduly burden private crop insurance agents, but it would also present significant and material conflicts of interest, given that crop insurance agents are hired by producers and have a vested financial interest in selling more policies. Verifications by FSA would help ensure accurate "substantiation" of prior cropping history.

2) We recommend that, if a producer cannot provide documentation from FSA, Natural Resources Conservation Service, or a Common Land Unit schema demonstrating a cropping history on the land, USDA should require the producer to provide another form of spatially explicit evidence (e.g., GIS planting/harvest maps vs. simply seed or other input receipts with no verifiable spatial information) showing the cropping history clearly. We further recommend that the Rule explicitly exclude the use of receipts and/or invoices as documentation of tillage.

RMA's June 2014 "Native Sod Guidelines for Federal Crop Insurance" does not provide any limitation on the types of evidence that may be used to prove that land has been tilled. Instead, the guidance provides seven examples of acceptable documentation. Moreover, the Interim Rule states that the absence of tillage will be "determined in accordance with information collected and maintained by an agency of the USDA or other verifiable records that you provide and are acceptable to us[...]" We are concerned that this flexibility will result in the use of unreliable evidence of tillage.

3) We recommend that, for any particular farm, USDA should apply the five-acre "de minimis" Sodsaver exemption until the farmer has converted a *cumulative total* of five acres of native sod since February 7, 2014. The five-acre cumulative limit should apply to all land for which the producer is a landlord, operator, or tenant, similar to current FSA policy for conservation compliance ineligibility determinations.

The 2014 Farm Bill's Sodsaver provision includes a "*de minimis*" exemption for conversions that impact five acres or less. That means that producers can convert up to five acres of their land without being subject to Sodsaver provisions. The Interim Rule is unclear as to whether farmers may take advantage of this exemption until they reach a five-acre cumulative cap, or whether they may break out five acres of native sod each and every year without any Sodsaver disincentives. The latter option is contrary to the intent of the law and would create a loophole for producers to break out much larger tracts of native sod over time.

4) We recommend that any native sod acreage that is converted after February 7, 2014 should be subject to Sodsaver disincentives for the first four years of federally insured crop production. For example, a producer who converts 10 acres of native sod in May 2014, plants alfalfa on that acreage in 2014-2017, and plants federally insured wheat in 2018 should be subject to four years of Sodsaver disincentives, starting in 2018 upon insuring another annual or perennial crop.

The 2014 Farm Bill clearly states that Sodsaver applies to converted sod "during the **first 4 crop years of planting**, as determined by the Secretary[...]" Yet, under the Interim Rule, a producer could convert native sod to a non-annual crop (e.g., alfalfa) for 1-4 years and then to an annual crop without being subject to Sodsaver disincentives for those years that the land is planted to the non-annual crop. For example, under the Interim Rule, a producer who tills native sod today and plants the land to alfalfa for four years before planting corn would not be subject to Sodsaver at all. This is entirely contrary to the intent of the law, which was expressly written to discourage the conversion of native prairie.

5) We recommend that FSA publish annual reports on changes in native sod acreage (“new breakings”) that result from conversion to agricultural production.

The reporting requirement within Sec. 11014 Crop Production on Native Sod (Subsection c “Cropland Report”) directs USDA to report on changes in cropland acreage. While not stated explicitly, the intent of this subsection is to require the collection of data on changes in native sod acreage. Simply reporting on cropland acreage rather than native sod acreage would be duplicative of other efforts within USDA and not in line with the original intent of the Farm Bill language. Additionally, according to USDA Bulletin: MGR-11-006, FSA should already be tracking new breaking acreage.

Thank you for the opportunity to comment on the Interim Final Rule with respect to Docket Number FCIC-14-0005 and the implementation of the 2014 Farm Bill’s Sodsaver provision.

Sincerely,

Agriculture and Land Based Training Association
Alternative Energy Resources Organization
California Certified Organic Farmers
California FarmLink
C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture)
Catholic Rural Life
Center for Rural Affairs
Clagett Farm/Chesapeake Bay Foundation
Community Alliance with Family Farmers
Dakota Rural Action
Delta Land and Community, Inc.
Ecological Farming Association
Farmer-Veteran Coalition
Fay-Penn Economic Development Council
Flats Mentor Farm
Florida Organic Growers
Grassworks
Hmong National Development, Inc.
Illinois Stewardship Alliance
Institute for Agriculture and Trade Policy
Iowa Environmental Council
Iowa Natural Heritage Foundation
Izaak Walton League of America
Kansas Rural Center
Kerr Center for Sustainable Agriculture

Land Stewardship Project
Michael Fields Agricultural Institute
Michigan Integrated Farm and Food Systems
Michigan Organic Food and Farm Alliance
Midwest Organic and Sustainable Education Service
National Center for Appropriate Technology
National Sustainable Agriculture Coalition
National Young Farmers Coalition
Nebraska Sustainable Agriculture Society
Northeast Organic Dairy Producers Alliance
Northern Plains Sustainable Agriculture Society
Northwest Center for Alternatives to Pesticides
Ohio Ecological Food and Farm Association
Organic Farming Research Foundation
Pesticide Action Network of North America
Practical Farmers of Iowa
Rural Advancement Foundation International – USA
Union of Concerned Scientists Food and Environment Program
Virginia Association for Biological Farming
Wild Farm Alliance
Women, Food and Agriculture Network