



National Sustainable Agriculture Coalition

February 13, 2015

Steve Peterson
Production, Emergencies, and Compliance Divisions
Farm Service Agency
United States Department of Agriculture
Stop 0517
1400 Independence Avenue SW
Washington, DC 20250-0517

Re: NSAC Comments on Noninsured Crop Disaster Assistance Program Interim Rule, RIN 0560-A120. Vol. 79, No. 240, Monday, December 15, 2014, page 74562

Submitted via Federal E-Rulemaking Portal

The National Sustainable Agriculture Coalition (NSAC) welcomes the opportunity to submit comments on the Farm Service Agency's (FSA) interim rule implementing the changes to the Noninsured Crop Disaster Assistance Program made by the 2014 Farm Bill.

NSAC is a national alliance of over 40 family farm, food, rural, and conservation organizations that together take common positions on federal agriculture and food policies to advance sustainable agriculture.

NSAC advocates for fair access to crop insurance and other risk management tools for all farms. This includes access for farms that market directly to consumers or retailers, highly diversified farms, organic farms, and farmer run by new and beginning farmers. We supported the expansion of NAP included in the 2014 farm bill as a way to provide a better, crop insurance like, risk management tool for farmers that do not have access to the Federal Crop Insurance Program.

We are excited about the expansion of NAP provided for by the 2014 Farm Bill and by the flexible and thoughtful rule that has been developed.

In that light, NSAC and our represented member organizations make the following recommendations on the Noninsured Crop Disaster Assistance Program Interim Rule.

We thank you for the serious consideration of our recommendations, and would welcome the opportunity to provide additional feedback.

Sincerely,

A handwritten signature in black ink that reads "Ferd Hoefner". The signature is written in a cursive, slightly slanted style.

Ferd Hoefner, Policy Director
National Sustainable Agriculture Coalition

A handwritten signature in black ink that reads "Paul Wolfe". The signature is written in a cursive, slightly slanted style.

Paul Wolfe, Policy Specialist
National Sustainable Agriculture Coalition



Part I: Recommendation on NAP Eligibility for Crops and Practices Not Covered by Federal Crop Insurance.

NSAC supports FSA's decision to offer NAP coverage for crops that have coverage available from the Federal Crop Insurance Program when there is no coverage available in that county due to the lack of actuarial data for the practice under which the crop is being grown when the practice is determined to be a good farming practice.

We encourage FSA to ensure that the definition of a good farming practice includes sustainable and organic farming practices. This includes that a practice is a good farming practice if it is recognized as such by agricultural experts for the area; or for organic farming practices, those generally recognized by the organic agricultural industry for the area or contained in the organic plan.¹

We also ask that FSA allow farmers to use innovative techniques to excel at conservation such as by using cover crops in non-traditional ways. Farmers could prove that the practice they use is a good farming practices through their own experience and knowledge, utilizing an affidavit.

Part II: Recommendations on Native Sod

During the three years leading up to passage of the 2014 Farm Bill, we 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.

1. We recommend that the Farm Service Agency (FSA), not crop insurance agents, be responsible for validating evidence presented by a producer to document that his or her land has been tilled. The interim rule mentions a process for determining whether or not land is classified as native sod and would fall under the purview of Sodsaver, stating: "Native sod means land on which the natural state plant cover before tilling was composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing and is land that has never been tilled (determined in accordance with information collected and maintained by an agency of the USDA or other verifiable records that are provided by a producer and acceptable to FSA) for the production of an annual crop through February 7, 2014." The interim rule states that verifiable records must be provided, but it does not state to whom the records must be provided. Moreover, the rule does not detail the types of records that can be provided. We are aware that for the Federal Crop Insurance Program, private crop insurance agents will be responsible for making determinations about what classifies as native sod and what qualifies as evidence that land has been tilled, based in part on criteria provided by the Risk Management Agency (RMA). We reiterate our recommendation that FSA make these determinations for NAP. We further urge FSA to develop a coordinated validation process with RMA by which FSA, rather than crop insurance agents, review evidence and conduct determinations for both NAP and crop insurance. Allowing crop insurance agents to make determinations would

¹¹ 7 CFR 457.8

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. We recommend that the following records be allowable proof that the land has never been tilled: a Farm Service Agency (FSA)-578 document showing the crop that was previously planted on the requested acreage; a prior crop year’s FSA-578 document showing that the requested acreage is classified as cropland; a prior crop year’s Common Land Unit (CLU) Schema, presented in a map format that contains the farm number, tract number, field number, CLU classification (the cropland classification code is ‘2’), and calculated acres by field; a Natural Resources Conservation Service (NRCS) Form CPA-026e identifying the acreage with a “No” in the Sodbust column and a “Yes” in the HEL column; an NRCS Form CPA-026e identifying the acreage with a “Yes” in the Sodbust column and a determination date on or before February 7, 2014; or precision agriculture planting records and/or raw data for previous crop years, provided such records meet the precision farming acreage reporting requirements.

2. 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 states, "If the producer’s total native sod acreage that is tilled in a crop year is 5 acres or less, the approved yield, service fee, and premium provisions specified in paragraph (c) of this section will not apply" [emphasis added]. The application of the de minimus acreage exemption as an annual exemption is in conflict with the intent of the law. The statute simply states, “The Secretary shall exempt areas of 5 acres or less from clause (i).” The intent of this provision was not to authorize USDA to exempt breakings of 5 acres or less each year. Rather, it was to allow covered farms to break up to 5 acres in total without being subject to penalties. An annual exemption 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.

3. 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 that a producer plants an annual crop. For example, a producer who converts 10 acres of native sod in May 2014, plants alfalfa on that acreage in 2014-2017, and plants wheat in 2018 should be subject to four years of Sodsaver disincentives, starting in 2018 upon enrolling the wheat crop in NAP. 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[...].” A producer should not be able avoid Sodsaver penalties by waiting four years before planting to an annual crop and enrolling in NAP. This would be entirely contrary to the intent of the law, which was expressly written to discourage the conversion of native prairie.

4) 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.

Part III: Recommendation on Coverage Periods

We thank FSA for allowing farmers to take advantage of the changes made by the interim even if they farm in an area where the NAP closing date for 2015 has already passed. It is important not to penalize farmers for the length of time it took to pass the farm bill and for FSA to construct a well thought-out rule.

Part IV: Recommendation on Service Fee and Premium Reduction

We thank FSA for ensuring that beginning and socially disadvantaged farmers and ranchers who paid a NAP service fee in 2014, before the enactment of the 2014 Farm Bill, will have their service fee refunded to them

Part V: Recommendations on Notice of Loss and Completion of Harvest

1. NSAC has no comment on the clarification in the rule requiring the reporting of a covered loss within 72 hours for certain hand-harvested crops and other crops as determined by FDA. It is understandable that for certain crops quick notice is needed in order to make an accurate loss assessment.

NSAC would encourage FSA to be extremely clear with producers at the time of purchase whether the crop requires 72 hours notice versus the normal 15 day written notice.

2. NSAC also encourages FSA to carefully calculate and anticipate the necessary capacity needed to perform adjustments after an event causing widespread loss. This includes expanding FSA's network of on-call independent auditors to keep pace with the likely increase in NAP sign-ups resulting from the changes to the program contained in the 2014 Farm Bill. A decrease in the ratio of auditors to acres enrolled, as the number of participants increases, would be detrimental to producers. Accurate crop loss assessments require quick inspection, FSA must ensure that all producers receive a timely loss assessment.

Part VI: Recommendation on Late-Planted Acreage

NSAC supports the change to allow value loss coverage to be available for the last planting period for crops with multiple planting periods. It is important that crop insurance is accessible and functional for all farmers including those that market directly to consumers or who are highly diversified. Farmers that direct market have the fewest crop insurance options and are some of the most likely to be planting later in the year in order to fill marketing niches, which is why this change is important.

Part IX: Recommendations on Average Market Prices

1. NSAC Supports FSA's decision to allow the setting of a separate average market price for a commodity within a state for different methods of production and marketing. This includes separate prices within a state for organically produced and conventional crops, and for wholesale and direct to consumer sales, or other local food sales.

Organically grown crops often demand prices that are much higher, often several times higher, than their conventionally grown counterparts. Organic producers also often incur higher production costs. If organic producers can only cover their crop at the conventional price they are put at a serious disadvantage as compared to conventional farmers in terms of their ability to manage risk. So, NAP coverage at the higher organic price is an important risk management tool.

Similarly, the price that a farmer can obtain varies significantly between wholesale markets and direct to consumer markets, or local food “intermediated” sales. The price that a wholesale purchaser is willing to pay is often much lower than what the farmer can sell the crop for directly to the end user or to local institutions and retailers.

These alternative markets can be important to a diversified farm that may sell into both markets, so it is important that the farmer can utilize the direct to consumer sales price through the NAP program.

2. We encourage FSA to utilize and accept a wide range of data sources when making the determination that there is sufficient data to establish an organic or direct market average market price. These sources should include but not be limited to, local and regional farmers market surveys, farmer receipts and records, contracts, proprietary marketing information from grower organizations, published or advertised prices, and local and regional farm stand prices.

3. NSAC supports FSA’s decision to allow producers that have sufficient evidence of the intended use of the crop (direct market or wholesale) to obtain a payment that is proportional to the amount of the crop intended for each use.

This flexibility is important to ensure that the farmers are able to cover the crop for its intended use. Without this increased flexibility a farmer’s coverage would be linked to the predominant intended use of the crop. This could significantly decrease a farmers NAP payment if just over half of the intended use was wholesale versus direct market. This provision of the interim rule increases the fairness of NAP.

Part X: Recommendation on Approved Yields

NSAC supports the change to eliminate the use of assigned yields and zero-credited yields for years when a farmer does not certify a report of production. This provision should help remove a barrier to participation in NAP by not penalizing producers for not reporting production number in years when they have not participated in NAP. It is also important to retain the use of the assigned yields and zero-credited yields for years when NAP is utilized in order to ensure the integrity of the program.

Part XI: Recommendation on Adjustment of Production Quality Losses

NSAC supports FSA’s decision to allow for protection under NAP for quality losses when it is caused by an eligible cause of loss.

For farmers that directly market their crops, quality can be very important, and in many situations they may have no other outlet for a crop that does not meet a quality standard. Given the lack of

processing capacity in many parts of the country, the direct market may be a farmer's only option, and that market has the highest quality demands.

We urge FSA to make it clear to farmers what quality standard they will have to meet at the time the coverage begins, so that there is no confusion later about what standard quality loss will be judged by.

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