



January 23, 2009

Mr. Tim Hoffman, Director
Product Administration & Standards Division
USDA Risk Management Agency
Beacon Facility—Mail Stop 0812
Room 421,
PO Box 419205
Kansas City, MO 64141-6205

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

RE: 2008 Farm Bill Interim Rule

Docket ID FCIC-08-0003

Docket Title Catastrophic Risk Protection; Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations; Basic Provisions

Document ID FCIC-08-0003-0001

Document Title Catastrophic Risk Protection Endorsement; Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions

Federal Register Vol. 24, No.227 at pp. 70861-70865 (Nov. 24, 2008)

Dear Mr. Hoffman:

The Izaak Walton League of America is a private, non-profit conservation organization that for more than 85 years has supported strong federal conservation policies on private lands, especially agricultural lands. Our nationwide membership lives, works and recreates in rural communities. We have a decades-long record of support for farm families and collaborative efforts to achieve conservation that sustains agriculture, habitat, and all natural resources.

Introduction:

Section 12020 of the 2008 Farm Bill is a carefully constructed response to a clearly identified need. As cited by the Government Accountability Office (GAO)¹, USDA's

¹ *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>

National Resources Inventory determined that the Nation's privately owned grassland decreased by almost 25 million acres between 1982 and 2003. And according to the GAO's report, "Farm program payments are an important factor in producers' decisions on whether to convert grassland to cropland.... Several economic studies have reached the same conclusion."

To cite just one example, the GAO recorded that the 16 counties in the Prairie Pothole Region of South Dakota that have converted the most prairie have received per acre payments from taxpayer-provided insurance that are double those received in all other South Dakota counties.

Section 12020 of the 2008 Farm Bill makes it possible to remove tax-payer provided incentives for expanding crop production onto grasslands that to this day have never been broken. This remnant prairie repeatedly proves to be poor for crop production, but critical to the livelihood of cow-calf operations. So Section 12020 makes this fragile land ineligible for subsidized crop insurance and linked disaster payments. Still, landowners are in no way prevented from converting those grasslands to federally-supported crop production if they choose.

IWLA Comments: Definitions

Native Sod

The interim rule provides a definition of Native Sod in 7 CFR § 407.9 and § 457.8 that closely follows the text of Section 12020. We want to emphasize that this definition adheres to the language in the statute that provides two criteria points:

“(1) DEFINITION OF NATIVE SOD.—In this subsection, the term ‘native sod’ means land—

“(A) on which the plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing; and

“(B) that has never been tilled for the production of an annual crop as of the date of enactment of this subsection.

First, it is clear that the definition specifies native grasses but also specifies other plants (grass-like, or forbs, or shrubs) all of which are suitable for grazing and browsing. We emphasize this for the fact that the “native” designation of existing grasses is just one of multiple possible plants that meet the definition. In using “or” the definition emphasizes, in effect, that the native or non-native status of the plants present is not the compelling criteria. Rather it is that the broadly referenced grass, grass-like, forb, or shrub plants are of a type suitable for grazing and browsing.

Secondly, and of ultimately higher determinative value, the definition requires that the suitable plants are present on “land” (Section 12020) or “acreage” (interim rule) that has never been tilled for the production of an annual crop. We emphasize that this second criteria is of higher determinative value because the broad definition of suitable plants

ultimately depends upon the plants simply being suitable for grazing and browsing. Additionally, as determined by the “and” in the interim rules definition which reads “...and that has no record of being tilled...,” the prevailing factor is that the acreage (“determined in accordance with FSA records”) has not previously been in annual crop production.

We emphasize these points to clarify that appropriate establishment and subsequent adherence to the rule should never be dependent on the native status or specific species of grass or plants. Beyond simply consisting of various plants being suitable for grazing and browsing, the final determining factor is that the acreage has not previously been converted for an annual crop.

Finally, we want to ensure that the term “tilled” is understood to broadly encapsulate the various means by which acreage may be prepared for an annual crop, including the understanding that the act of seeding an annual crop constitutes tilling. Acreage may be converted with many methods, including chemical treatment and no-till drilling, but the determinative factor is that the acreage has no previous record of any means of conversion for an annual crop.

Prairie Pothole National Priority Area

The interim rule specifies the counties in the Prairie Pothole National Priority Area in 7 CFR § 407.9 and § 457.8 by referencing the RMA website. We request that the interim rule be revised to explicitly list the counties within the states of Iowa, Minnesota, Montana, North Dakota and South Dakota that are in the Prairie Pothole National Priority Area.

IWLA Comments: Insurable acreage, applicability and timing

The interim rule adds new sections in 7 CFR § 407.9 (at 3. Insured and Insurable Acreage) and § 457.8 (at 9. Insurable Acreage) to specify when native sod is ineligible for crop insurance. The language is virtually identical in the two sections and is consistent with Section 12020, except in the final sentence of the sections: “If the Governor makes this election after you have received an indemnity or other payment for native sod acreage, you may be required to repay the amount received and any premium for such acreage may be refunded to you.”

Section 12020 states that, “...*native sod acreage that has been tilled for the production of an annual crop after the date of enactment of this subsection shall be ineligible during the first 5 crop years of planting....*”

In that both Section 12020 and the interim rule affirm that acreage tilled for production after May 22, 2008 is not insurable, we believe it is necessary to specify that a payment received shall be repaid and a premium paid shall be refunded.

Further to this point, paragraph d. of the “Background” section of the interim rule contains the same usage of “may” that we assert should be “shall.” As stated in

paragraph d. in adherence to Section 12020, “The 2008 Farm Bill is specific in that, at the election of the Governors of these states, any acreage of native sod that is tilled for production of an annual crop after the date of enactment will be ineligible for insurance for the first 5 crops years of planting.” We agree that the Farm Bill is specific and that the ineligibility shall apply whenever a Governor elects to make section 508(o) of the Act effective.

In addition, paragraph d. stipulates that Governors will be contacted by RMA and encouraged to make the election under 508(o) by February 15, 2009. We recognize this as a helpful suggestion with practical advantages for avoiding the complexities of required benefit repayments and premium refunds in the first crop year in which the election may be made. However, Section 12020 clearly does not set a deadline for making the election, and 508(o) may be made effective by any applicable Governor at anytime.

As stated in the Application sections of Section 12020, ineligibility will “*apply to native sod acreage in the Prairie Pothole National Priority Area at the election of the Governor of the respective State.*”

We emphasize these points to clarify that appropriate establishment and subsequent adherence to the rule will ensure that the only specific action a Governor may take is to elect to make 508(o) effective. Section 12020 and the interim rule clearly do not and should not place any limit upon when a current or future Governor within the Prairie Pothole National Priority Area may elect to make 508(o) effective, and Section 12020 and the interim rule clearly do not and should not enable a current or future Governor to nullify 508(o) if an election has been made previously.

However, with respect to the complexities of future required benefit repayments and premium refunds on any acreage in the first 5 years after 508(o) is made effective—on native sod acreage converted anytime after May 22, 2008—we recommend that future elections should become effective only prior to February 15 of a given year. Or stated alternatively, elections made after February 15 will become effective for the next crop year.

Finally, Section 12020 specifies a “*DE MINIMIS ACREAGE EXEMPTION*” that requires areas of 5 acres or less to be exempt from the ineligibility designation. We want to emphasize that it would contradict the intent and spirit of the law to allow incremental conversion of contiguous parcels of 5 acres or less. We emphasize this point to clarify that appropriate establishment and subsequent adherence to the rule must ensure that multiple tracts of 5 acres or less that become contiguous tracts totaling more than 5 acres should be regarded as a single tract larger than 5 acres and therefore ineligible for crop insurance.

IWLA Comments: Additional action

USDA data shows that the loss of rangeland and pastureland is not limited to the states of the Prairie Pothole National Priority Area. In fact, data cited in the previously referenced GAO report shows that states like Colorado, New Mexico and Texas are experiencing losses as bad or worse than those in the Prairie Pothole Area.

Landowners throughout the country who are maintaining grasslands receive none of the federal farm program supports that studies show are an important factor in converting grasslands to annual crop production. Again, the GAO detailed that even among annual crop producers, the landowners that are converting the most native sod are receiving far larger insurance benefits than their neighbors who are not. Further, the federal farm program is paying landowners to re-establish perennial grass and plants on previously converted sod at the very same time crop insurance and other federal benefits are prodding the conversion of perennial grasslands.

We recommend that the “added land” provision of crop insurance rules be amended to require land without production crop history prior to May 22, 2008, that is subsequently planted to a crop, must establish a full four to ten year actual production history prior to becoming eligible for insurance.

Conclusion:

The Izaak Walton League of America supports the interim rule with the changes and clarifications we have detailed above. We thank you for your consideration of these comments. Please direct any inquiries regarding this submission to Brad Redlin, IWLA Agricultural Program Director, bredlin@iwla.org, (651) 649-1446 ext. 13.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Brad Redlin', is written over a light blue horizontal line.

Brad Redlin
Izaak Walton League of America
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