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March 17, 2009

Director, Easement Programs Division,
U.S. Department of Agriculture, Natural Resources Conservation Service,
Room 6819, P.O. Box 2890, Washington, DC 20013-2890

Technical Service Provider Team, Natural Resources
Conservation Service, Technical Service Provider Assistance Comments,
P.O. 2890, Room 5234-S, Washington, DC 20013

RE: Docket Numbers NRCS – IFR – 08006 and 08011

To Whom It May Concern:

The Massachusetts Department of Agricultural Resources (MDAR) is pleased to provide the comments included herein relative to the interim rules and the rule making process associated with the Farm and Ranch Lands Protection Program and Technical Service Provider Assistance (Docket Numbers NRCS – IFR – 08006 and NRCS – IFR – 08011 respectively). The Commonwealth of Massachusetts is proud to have a more than 30 year history with our Agricultural Preservation Restriction Program that has enabled the permanent protection of farm land resources; to date permanently protecting more than 10% of the State's nearly 520,000 farm land acres. A critically important component of the Commonwealth's ability to maintain our farm land protection activities has been the strong and interactive partnership that we continue to enjoy with our federal counterparts at the USDA. Similarly, our efforts to enhance the delivery and availability of technical assistance to our *growing* agricultural sector has been the result of our ability to develop and implement creative delivery systems that we believe have maximized the beneficial impact of Federal and State resources. To that end, we have reviewed the interim rules for the Farm and Ranch Protection Program and Technical Service Provider Assistance and have included comments in this correspondence that we believe will facilitate our continued efforts and strengthen the already strong relationship that we enjoy with our Federal partners.

We welcome the opportunity to describe our comments further and to work with you toward a fruitful implementation of the Food, Conservation, and Energy Act of 2008.

Respectfully submitted,


Scott J. Soares
Assistant Commissioner

Massachusetts Department of Agricultural Resources
Comments on the Interim Final Rule for the
FARM AND RANCH LANDS PROTECTION PROGRAM
Docket Number NRCS – IFR – 08006

And

TECHNICAL SERVICE PROVIDER ASSISTANCE
Docket Number NRCS-IFR- 08011

Docket Number NRCS – IFR – 08006:

The passage of the Food, Conservation and Energy Act of 2008 (the 2008 Act) provided optimism and enthusiasm to state entities, which in contrast to previous guidelines under the 2006 Interim Final Rules for administrating the Farm and Ranch Land Protection program were frustrated by impediments within the past rules. The Massachusetts Department of Agricultural Resources (MDAR) felt the Act of 2008 recognized some of the shortfalls from the 2006 rules, which conflicted with State Statutes and encumber existing state program standards that have demonstrated to be resilient over the test of time. Therefore, MDAR urges revision to the IFR within the following subject matters:

THE CONTINGENT RIGHT OF ENFORCEMENT

The Act of 2008 was to change NRCS program role towards not acquiring easements rights, essentially for NRCS to provide funding for easement purchases by indentified qualified entities. Congress had stipulated the Secretary of USDA would require a “contingent right of enforcement” within the easement terms for projects that utilizes program funding, in order to protect federal interest and in the event the eligible entity cannot enforce the easement terms, then the Federal Government can intervene. Unfortunately the IFR declares that the “contingent right of enforcement” as a vested real property right, which is contradicting Congress’s intent.

MDAR urges that the IFR be rewritten and allow NRCS to administer the program unencumbered by standards that proved to be problematic within the 2006 IFR. Allow the program to be administered in a manner that recognizes protections already afforded under state and constitutional laws, with qualified state entities. In addition, where a state entity has the equivalent responsibility to enforce the same level of protection within its own easement terms, then a waiver or assignment of the “contingent right of enforcement” should be allowed.

CERTIFICATION FOR QUALIFIED ENTITIES

The proposed IFR does not go far enough to qualified entities to become certified. The rule only provides an incentive in terms of cooperative agreement duration for certified entities of 5- years versus a 3-year term for other eligible entities. There is no additional incentive for an established entity to become certified. More meaning incentives such as to rewrite the rule and provide a certification program that would minimize appraisal and title reviews, and enable certified entities to us their own selection criteria and process, as well as utilize their own easement language without reserved authority to USDA.

MDAR recommends that a certification program be developed that identifies a qualified entity and that the entity is capable to administering a program consistent with the programs purposes, and not subject continuous review.

FOREST MANAGEMENT PLANS

The requirement forest management plans is a new administrative burden and that was not contemplated by Congress or provide for in statute. The rule requires that projects with more than 10-acres of forested land, or ten percent of the easement area as forest, must have a forest management plan prior to closing. The requirement for a forest plan is more burdensome than the requirement for a conservation plan, in that agents for developing a forest management plan are an additional outside resource, which adds an additional layer scrutiny that can deter a landowner from participating in the program.

MDAR recommends that this requirement for forest management plans be eliminated. Should the forest management requirement remain, then the requirement standard should be changed to for only parcels of at least 100-acres of forest land and that an agreement is in place at time of closing between the landowner and forest planner to complete a forest management plan within a reasonable time schedule. Furthermore, recognizing the variability of forest management plans from state to state, if the forest planning requirement persists, MDAR strongly recommends that there be established national standards relative forest management and that such standards be developed in consultation with the state agencies.

IMPERVIOUS SURFACES

Noticeably Congress wanted revisions to FRPP's impervious surfaces standards, so that it is not strictly the protection of topsoil, but protection of the agricultural use and related conservation values; which will align closer with MDAR's mission of keeping agricultural economically viable while protecting the working land resource. The IFR regarding impervious surfaces remains more or less unchanged, no more than 2% of the FRPP easement area, except the State Conservationists may provide for a project specific waiver allowing up to 10% impervious surface area for the easement. The project by project waiver process can be inefficient; however, an understanding of an eligible entity's impervious surface standards would be better determined at the time of certification of the entity.

MDAR requests that USDA authorize eligible entities to use their own impervious surface standards for agricultural activities on easements purchased with program funds and that can demonstrate "a limit on the impervious surfaces to be allowed that is consistent with the agricultural activities to be conducted."

PROJECT RANKING CONSIDERATION

The 2008 Act does not mention a need for such a project ranking process and a ranking criteria that commands a majority score towards considering a project application again presents inefficiencies with the process. This added filter for a project creates an uncertainty for both the eligible entity and the project applicant about participating in the program. Seemingly, the ranking criteria should be conveyed by the eligible entity during the certification process.

MDAR believes that program criteria should be left to eligible entities, once they become "certified entities".

Docket Number NRCS – IFR – 08006:

The Massachusetts Department of Agricultural Resources (MDAR) has come to work closely with our federal counterparts at the USDA Massachusetts offices of NRCS, FSA and RD. Through such efforts we have come to recognize and develop technical service provider (TSP) agreements that have certainly provided multiple benefits for our farming and land owner communities as well as the efficient and targeted delivery of numerous state and federal programs. With this in mind, MDAR strongly supports continued and enhanced opportunities for such TSP to be created between state and federal agencies in an effort to ensure continued delivery of a broad array of services to our agricultural and land owner communities. It is concurrently important that the federal agencies be allowed to maintain some level of flexibility in an effort to achieve better efficiency and eliminate possible redundancy in administrative oversight and program efforts.