

Decker, Denise - Washington, DC

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From: Jen Mock [JenMock@fishwildlife.org]
Sent: Monday, March 16, 2009 11:25 AM
To: RA.dcwashing2.frpp
Cc: Jen Mock
Subject: Comments on FRPP IFR
Importance: High
Attachments: NRCS-IFR08006_FRPP interim final rule_AFWA comments_draft_16Mar2009_final.pdf

Good Morning,
Thank you for the opportunity to comment on the FRPP IFR. Please find the Association's comments attached for your consideration.
Best regards,
Jen

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The voice of fish and wildlife agencies

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March 16, 2009

Easement Programs Division
Natural Resources Conservation Service
Farm and Ranch Lands Program Comments
PO 2890, Room 6819-S
Washington, DC 20013

**RE: Docket Number NRCS-IFR08006, Farm and Ranch Lands Protection Program
Interim Rule**

Dear Sir or Madam:

The Association of Fish and Wildlife Agencies (Association) appreciates the opportunity to comment on the interim rule affecting Farm and Ranch Lands Protection Program as provided by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The Association represents the collective perspectives of the state fish and wildlife agencies, and promotes sound management and conservation. All fifty states are members.

Thank you for the opportunity to comment on the interim final rule and provide our perspectives. Generally, we felt the rule was well written but we do have a few suggestions that we think would improve the programs' applicability to farm and ranch lands across the country. Specifically, we noticed the rule refers specifically to farm land and not to "ranch land." Because it is the Farm and Ranch Lands Protection Program (FRPP) and ranch lands are eligible for enrollment, we recommend using the term "farm and ranch lands" in all statements, references and provisions throughout the rule so potential participants and the public clearly understand the program is about the protection of the nation's farm lands and ranch lands. Our specific recommendations and concerns about the interim rule are highlighted in the attached comments for your consideration and inclusion in the final rule.

Again, thank you for your consideration of our recommendations for the implementation of the Farm and Ranch Lands Protection Program. Please do not hesitate to contact Mrs. Jen Mock Schaeffer at jenmock@fishwildlife.org or at 202-624-7890 with any questions about our comments, or if we can further assist with this provision.

Sincerely,

Matt Hogan
Executive Director

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**Comments on the Farm and Ranch Lands Protection Program Interim Rule
Submitted by the Association of Fish and Wildlife Agencies**

General Comments on the rule:

Numerous times the rule refers to farm land and not to “ranch land.” Because it is the Farm and Ranch Lands Protection Program (FRPP), we recommend using “**farm and ranch lands**” in all statements, references and provisions throughout the rule so potential participants and the public clearly understand the program is about the protection of the nation’s farm lands and ranch lands.

Specific Comments on the Rule:

1491.3 Definitions

- The Association supports the definitions of “**farm and ranch land of statewide importance,**” “**farm and ranch land of local importance,**” and “**other productive soils**” as provided in the rule and do not recommend any changes in these definitions for the final rule.
- The definition of “**forest land**” includes the specific growth habits of “single-stemmed woody species of any size that will be at least 13 feet tall at maturity.” We do not understand why this specific growth habitat was included in the definition, but we believe it will limit the program’s applicability in some areas. Depending on the region of the country, annual precipitation, whether the species is invasive or native to the area, previous management treatments, natural regeneration patterns, and other factors not all woody species that should be eligible under this definition are “single-stemmed” or will be “at least 13 feet tall at maturity.” Specifically, some thornshrub and juniper species are technically multi-stemmed and may not reach 13 feet at maturity because of previous management treatments, but we believe they should be eligible under the definition of forest land. Therefore, we suggest the following modifications to the first sentence in definition of “forest land:”
 - **Forest land means a land cover or use category that is at least 10 percent stocked by woody species.**
- There is **no definition of impervious surface** in the rule but the term is used in the rule in Section 1491.22(i). Because interpretation of “impervious surface” could dramatically vary across the country and affect the quality of the easement, we recommend including a definition of impervious surface in the final rule. The Association recommends incorporating the following definition of “impervious surface” in the rule:
 - **Impervious surface means a constructed surface covered by impenetrable materials such as asphalt, concrete, brick, and stone. These materials seal surfaces, repel water and prevent precipitation and meltwater from infiltrating soils. Soils compacted by repetitive use by machinery or vehicle use may be considered impervious.**

1491.4 Program requirements.

- (5) Refers to NGOs’ dedicated fund that “...is sufficiently capitalized in accordance with “NRCS standards.” We believe that having a “standard” is beneficial to all involved

because it offers an equal playing field and clearly articulates expectations. However, based on the rule it is unclear (1) what the “NRCS standards” are; (2) whether these standards for NGOs are different from or the same as those standards for NRCS or other federal agencies; and (3) the standards should be clearly articulated for program clarity and transparency. Therefore, we recommend **including information about the “NRCS standards”** in the final rule.

- (9) “May be land on which gas, oil ... offered for participation in the program.” The Association **supports provision (9) as written in the rule**. It is vitally important that this provision remain in the rule as stated because many of the mineral rights in the west are held by the federal government under private property. Furthermore, this allows NRCS the much needed flexibility to address mineral right concerns as appropriate in each state and individual easement.

1491.6 Ranking considerations and proposal selection.

(g)(8) “Landowner willingness to allow public access....” The Association **supports the concept and inclusion of such a provision** in the rule. However, this statement is rather open-ended, and it is conceivable that an eligible entity could be willing to allow public access for recreational purposes during the ranking consideration and proposal selection processes but then withdraw that public opportunity at a later date after the easement is perfected. This would be unfair to others in the ranking/selection process as well as to the public. Therefore, we recommend the following modifications to this provision:

- (g)(8) Landowner willingness to allow public access **for hunting, fishing, trapping, and other wildlife-associated recreation purposes, depending on the length of access allowed by the State, and as part of a state-sanctioned access program.**

1491.21 Funding.

(d) “...a minimum of 25 percent of the purchase price of the conservation easement.” The law states that an eligible entity shall provide “not less than 25 percent of the acquisition purchase price.” The “acquisition purchase price” is different from the “appraised fair market value” of the conservation easement, and the former should include all related administrative and transaction costs incurred by the entity. Therefore, we recommend modifying this provision to read as follows:

- (d) **The entity must provide a minimum of 25 percent of the acquisition purchase price of the conservation easement, which may include related administrative and transaction costs incurred by the entity.**

(e) “FRPP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.” We believe as written, this provision will make it financially difficult for some entities to enter into FRPP agreements, may limit the programs applicability under the current economic climate, and that these expenses should be considered part of the “acquisition purchase price.” **In order to provide more state flexibility, healthy competition among potential participants, and use of the FRPP across the country the Association supports these costs being used as part of an entity’s contribution, matching cost, or acquisition purchase price for the easement to FRPP funds.** Furthermore, we suggest FRPP funds may be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.