

Decker, Denise - Washington, DC

From: Douglas Gillespie [doug@mfbf.net]
Sent: Tuesday, March 17, 2009 6:03 AM
To: RA.dcwashing2.frpp
Subject: FRPP Interim Final Rule Comments
Importance: High
Attachments: FRPPComments09.doc

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Please see attached comments.

**PLEASE NOTE MY NEW FARM BUREAU E-MAIL ADDRESS:
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Massachusetts Farm Bureau Federation, Inc. is a member-driven trade organization representing more than 6,100 paid member families across the Commonwealth. Our mission is "To protect the rights, encourage the growth, and be of service to our members, in the best interest of agriculture."



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March 12, 2009

Easements Programs Division
Natural Resources Conservation Service
Farm and Ranch Lands Program Comments
P.O. Box 2890, Room 6819-S
Washington, DC 20013

Re: Docket #NRCS-IFR-08006

To Whom It May Concern:

I would like to offer comments on the Interim Final Rule published for the USDA/NRCS Farm and Ranch Land Protection Program, on behalf of the 6,400 member families of the Massachusetts Farm Bureau Federation. Massachusetts has one of the oldest and most successful state farmland protection programs, and the Interim Final Rule as written would actually hinder the important farmland protection initiatives within Massachusetts. We urge modifications to the rule in the following five areas:

The "Contingent Right of Enforcement" Provisions Must Not Be Considered a Federal Property Interest:

The 2008 Farm Bill fundamentally changed the workings of FRPP to ensure that the program role was not to directly acquire easements, but to facilitate and provide funding for easement purchases. To protect the federal interest, Congress stipulated that USDA would acquire a "contingent right of enforcement" on easements acquired with FRPP funds. The IFR asserts that the "contingent right of enforcement" is a vested real property right, which flies in the face of congressional intent. The IRF must be rewritten to allow NRCS to administer the program much as it was administered prior to the 2006 IFR, eliminating requirements that followed from USDA's characterization of the federal interest as a vested real property right.

We further believe that the federal right of enforcement should be waived or assigned to state programs in cases where state protection easements contain the same level of protection.

The Certification of State/Local Programs Must Reduce Administrative Review of Experienced Entities:

The purpose of the certification program authorized in the 2008 Farm Bill was clearly to simplify the process for qualified entities and NRCS. The proposed Interim Final rule provides no incentive for a qualified entity to become certified. USDA should rewrite the rule to develop a certification program that, for certified entities, would minimize appraisal and title reviews, allow flexibility in project selection criteria and processes, and allow entities to use their own easement language without reserved authority by USDA. The certified entity should be considered as an equally valuable partner, qualified to administer a program consistent with USDA purposes, and not subject to project-by-project review.

The Forest Management Plan Requirement Should be Eliminated or Revised:

The rule requires that projects with more than 10 acres of forest land, or ten percent of the easement area as forest, have a forest management plan prior to closing. This requirement is a significant new burden, that was never envisioned in the statute. Forest land is often supplemental to active productive farmland, and, while not actively managed, is a vital component to the farming use. Forest land may provide a natural buffer between farmland and adjacent development, or vital natural resources. We

would suggest that if forest management plans are to be required, they be required only on parcels with at least 100 acres of forest land.

Impervious Surface Policy Needs Revision:

Congress clearly sought revisions to the NRCS impervious surface policy in the 2008 Farm Bill, yet the Interim Final rule leaves the current policy essentially unchanged. While protecting farmland remains a purpose of FRPP, Congress added language to stress the protection of “agricultural use and related conservation values of eligible land” to align FRPP with state programs that seek to enhance farm business viability. Congress also authorized eligible entities to use their own contract language, including “a limit on the impervious surfaces to be allowed that is consistent with the agricultural activities to be conducted.” The Interim Final rule fails to address this conflict, which must be remedied with flexibility in the USDA impervious surface policy.

National Ranking Factors Should be Reconsidered:

To require that national ranking criteria must comprise half the score for a parcel being considered for the program flies in the face of the flexibility for certified entities envisioned in the Farm Bill. We believe that program criteria should reflect locally-driven goals and objectives, and the distinct differences and diversity of agriculture. Program criteria should be left to the state programs, once they become “certified entities”.

In states where applications come from both certified entities and other applicants, USDA would need to review projects according to broad categories of ranking criteria. Examples include soils, land type, farm size, development pressure and proximity to other protected farmland.

We appreciate the opportunity to comment on the Interim Final Rule, and hope that our comments, reflecting the thoughts of our farmer constituents, are carefully considered in revisions to the rule. We appreciate the value of the FRPP, and look forward to making the program even more effective.

Sincerely,



Douglas P. Gillespie

Executive Director