

# Commonwealth of Pennsylvania



## DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

March 5, 2009

RECEIVED MAR 12 2009

John Glover, Acting Director  
Easement Program Division, NRCS  
Farm and Ranch Lands Protection Program Comments  
PO Box 2890 Room 6819-S  
Washington, D. C. 20013

Dear John Glover:

This letter is in regard to the proposed interim final rule for Farm and Ranchlands Protection Program (FRPP) under the 2008 Farm Bill.

Pennsylvania leads the nation in farmland preservation. To date, the program has permanently protected over 400,000 acres of productive farmland. USDA has been a valuable partner in this effort. The Commonwealth has a long-standing history of partnering with USDA through FRPP. Since 1996, Pennsylvania and its counties and land trusts have secured roughly \$35 million in federal reimbursements. The program under the 2008 Farm Bill makes several necessary improvements. Eligible entities may now enter 5-year cooperative agreements with a rolling application cycle. This will create more continuity from year to year. In addition, greater flexibility of impervious surface limits is favorable as agriculture continues to evolve. One of the most notable improvements is removal of the yellow-book appraisal report requirement. This requirement is problematic in that it causes substantial delays in scheduling farms for settlements, it postpones the state and county programs from receiving reimbursement and it is an unnecessary expense for either the program or farmer. For these reasons, the Department again requests a yellow-book appraisal report waiver for applicants under the 2007-08 cooperative agreement. In addition, this waiver should be extended to all applicants under Pennsylvania county programs that have applied directly for funds in the 2007-08 year.

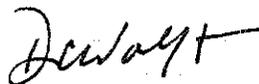
The following points relate to the proposed interim final rule:

- 1491 22 (c) states "A conservation easement deed template used by the eligible entity shall be submitted to the NRCS National Headquarters within thirty days of signing the cooperative agreements".
  - The Department wants to make clear that deeds under the state program may not be revised without a change in legislation. Any required language must be accomplished through the addendum.
- 1491 22 (i) states, "The NRCS State Conservationist may waive the two percent impervious surface limit on a *parcel by parcel basis*".
  - As stated above, the Department is pleased with the more flexible impervious language and the potential for a waiver of up to 10%. However, we would like to impose any such impervious surface limitation consistently to all applicants and not have that limit waived on a parcel by parcel basis. This should be negotiated in the cooperative agreement.
- 1491 22 (d) states, "The conveyance document must include a "right of enforcement" clause for the United States.

- As stated in a letter dated October 23, 2008 from Congressmen Holden and Leahy, the intent of this language is a concern.
- The Department would prefer to see the term “contingent right of enforcement”, which grants the Secretary the legal standing to enforce a conservation easement in the event the holder of the easement fails to enforce it.
- The term “right of enforcement” may imply a “real property right” therefore subjects the transactions to lengthy review procedures required by the Department of Justice (DOJ).
- 1491.1 (a) states, “FRPP cooperative agreements shall be administered under the regulations in effect at the time the cooperative agreement is signed.”
  - Consider further language allowing for issues to be made retroactive to previous cooperative agreements if mutual agreement between both parties is reached
- 1491.4(f) states, “Forest Land that exceeds the greater of 10 acres or 10% of the easement area shall have a forest management plan.”
  - The statute only requires a conservation plan on Highly Erodible Land (HEL). Requiring a forest management plan on all woodlots greater than 10 acres creates an inconsistency. In addition, most conservation plans already have a forestland component to cover woodlots.
  - Many farms in the Pennsylvania include woodlots. This requirement may become burdensome and difficult to accomplish given the limited number of District Foresters in Pennsylvania.
- 1491.4(g) states, “State Conservationist will provide the guidelines through which NRCS will review appraisals for quality control purposes.”
  - USPAP appraisal reports are already reviewed by Department staff prior to State Board approval of the farm.
  - Recommend spot-checks rather than each appraisal report reviewed by USDA.
- 1491.4 (a) states, “Under FRPP, the Chief, on behalf of CCC, shall provide funding for the purchase of conservation easements or other interests in eligible land. . . . The statute, however, states “shall *facilitate* and provide funding. . . .”
  - Concern that the legislative intent to allow entities to utilize funds under its own guidelines is being lost by removing the word “facilitate”. The language under the new farm bill provides a tremendous opportunity to streamline the existing program and that should be reflected in the Rule.
- 1491.6(g) provides ranking points for “Landowner willingness to allow public access for recreational purposes”.
  - This factor is not realistic for working farms due to bio-security, crop damage, liability etc. and makes questionable the intent of the program

The Department appreciates the opportunity to comment on the interim final rule. Pennsylvania will benefit from the improvements made to the program and we look forward to continuing our successful partnership with USDA. Please do not hesitate to contact Doug Wolfgang, Bureau Director for Farmland Preservation, at (717) 783-3167 or [dowolfgang@state.pa.us](mailto:dowolfgang@state.pa.us) if there are questions or comments.

Sincerely,



Dennis C Wolff  
Secretary