

*COMMENTS ON DOCKET NUMBER NRCS-IFR-08013 REGARDING THE INTERIM  
FINAL RULE FOR THE FARM AND RANCH LANDS PROTECTION PROGRAM*

August 3, 2009

Dear Chief White:

Thank you for the revision published in the Federal Register for July 2, 2009 to the Interim Final Rule for the Farm and Ranch Lands Protection Program (FRPP).

We believe this revision correctly clarifies an important part of the rule to recognize the changes intended by the Congress in enacting the 2008 Farm Bill. By making it clear that USDA is not purchasing property and will not be a co-holder of FRPP easements, this revision provides significant reassurance to the landowners, nonprofits and local governments working in partnership with the Natural Resources Conservation Service (NRCS) on the program, and prevents wasteful duplication of work in title searches.

We strongly urge you to direct State Conservationists to see that any cooperative agreements that have been signed since enactment of the 2008 Farm Bill, and any new easement closings scheduled for the future, are modified to conform to the new rule.

#### Impervious Surfaces

On another issue, we would like to support the interim final rule's requirement of a 2% impervious surface standard, with provision for a waiver by the state conservationist providing for limits up to 10%.

An impervious surface standard can be a difficult measure to implement and enforce, but it does address an important issue. We had previously expressed our opinion that a graduated scale would be better, but we are pleased with NRCS's conclusion that it is important to protect the soil resources of FRPP protected properties, and are pleased that NRCS has, in the interim final rule, added more flexibility for state conservationists.

Clearly, soil is a critical resource and a focus of the program. The purpose of the FRPP program is, according to the farm bill "to protect the agricultural use and related conservation values of eligible land by limiting nonagricultural uses of that land." We read protecting "agricultural use... of eligible land" to mean protecting soil-based agriculture.

This is a change of emphasis from prior law, which cited "protecting topsoil" as its sole purpose. The change recognizes that topsoil protection alone is not what this program

intends to protect. Rather, it intends to protect soils so that they can continue to be used for agriculture. That is why the new law makes the presence “of prime, unique or other productive soil” one of three qualifications for land eligible for the program.

Any agricultural use of the land will have some impact on topsoil, and it has been understood from the start that it is not the purpose of this program to preclude all soil disturbance. We encourage NRCS to recognize that even “non-agricultural” uses that disturb soils may be allowed where that disturbance is temporary or insignificant to the continued use of the property for agriculture (such as the installation of a buried cable or pipeline).

We believe the statute means to protect agriculture that depends on the soil, as opposed to fishponds, animal confinement facilities, or greenhouses for potted plants or hydroponics. That’s not to say that farms protected by FRPP easements may not have such things. They certainly may, within reasonable limits designed to ensure continued agricultural access to the farm’s soils.

Providing a limit to impervious surfaces acknowledges that buildings and roads will have to be limited, to protect the continued viability of soil-based agriculture on the property – but is also clear that those limits should not be so strict as to preclude appropriate soil-based agriculture from taking place.

We believe the interim final rule is reasonable on this, although we urge NRCS to be very clear in giving the authority to grant such a waiver to the State Conservationist.

We would go further and encourage NRCS to give their State Conservationists the authority to grant waivers in cooperative agreements covering more than one easement, with conditions relating to a reasonable basis for the waiver. For example, we see no reason why a cooperative agreement with an eligible entity protecting farms large and small would not specify that all farms less than 10 acres would be granted a waiver to 10%, while all those above 100 acres would only be granted a waiver on an individual basis, and only upon a showing that a waiver was needed for economic viability of the farm operation.

### Certification

The certification of eligible entities directed by the Farm Bill is only vaguely addressed in the interim final rule. We continue to believe that this could be an important part of the program, if implemented, and would greatly appreciate being included in any further discussion of moving from the vague direction in the rule toward actual implementation.

### Forest Plans

Section 1491.4(f)(5) of the Interim Final Rule requires a forest management plan before closing for projects that include forest land that exceeds the greater of 10 acres or 10 percent of the easement area.

We urge NRCS to revisit this requirement. We are huge supporters of forest planning, and believe that the lack of good forest plans is a critical problem for private forest lands used for commercial harvest of timber, pulp, and, potentially, energy resources. But the requirement of a formal plan for 10 acres or 10% of the easement area is probably unrealistic, and may prove to be a unneeded barrier to landowner participation. Few farmers with such small forest ownerships manage those forests for commercial harvest.

Requiring a plan for any commercial harvest of timber is perfectly fine: requiring a plan for simply having a small tract of woodland is not a wise use of relative rare resources for silvicultural planning.

#### Department of Defense MOU

Recently, NRCS has determined that because of the changes made to the FRPP program in the 2008 Farm Bill, it can no longer accept matching funds from the US Department of Defense, which had for several years been providing such funds in order to support the continuation of agriculture in areas abutting military bases and training areas. The projects that had been completed or were in progress in Kansas, Oklahoma and South Carolina were seen as very successful cooperative efforts between USDA, DOD, and local landowners.

We would very much like to see this inadvertent consequence of the changes made to the law reversed, and urge you to review whether there is any way to correct this administratively – and, if not, to make such a correction a high priority for legislative action as quickly as possible.

Thank you again for the opportunity to provide our input on the FRPP program and its implementation.

Sincerely,



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