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September 25, 2006

Easement Program Division
NRCS
1400 Independence Ave., S.W.
Room 6189-S
Washington, DC 20250-1400

RE: Farm and Ranch Lands Protection Program RIN0578-AA37

To Whom It May Concern:

The American Farm Bureau Federation (AFBF) is pleased to offer its comments on the interim final rules for the Farm and Ranch Lands Protection Program (FRPP).

The FRPP authorizes the Secretary of Agriculture to purchase conservation easements or other interests in land for the purpose of preserving topsoil by limiting non-agricultural uses of the land. Purchases are made through eligible partnership entities. This interim rule would amend rules enacted in 2003 in an effort to more appropriately address questions that have arisen with regard to the program.

The interim rule makes several changes to the existing rule. We shall discuss each such change.

1. Definition of Fair Market Value

The interim rule proposes a new definition of "fair market value" to include the difference in the value of the entire property before the easement and the value of the entire property after the easement. This definition is supposed to reflect principles in the Uniform Appraisal Standards For Federal Land Acquisitions (Yellow Book).

The Yellow Book method contains a before-and-after appraisal method—the difference in value of the subject property before the encumbrance and after the encumbrance. This is what is generally reflected in the FRPP. It is the approach taken in the Healthy Forest Restoration Program (HFRP) rules, which we supported.

The FRPP appears to go beyond the HFRP rules, however. The HFRP (and the Yellow Book approach) measure the values of the subject property—that which is being encumbered. The FRPP, however, takes into account the values of the "whole property," not just that which is being encumbered. As explained in the FRPP rule,

"Although the easement may lower the value of the land being protected by preventing development for certain uses, the easement may increase the value of adjacent land. The

demand for land adjacent to protected land may increase resulting in an increase to the value of the adjacent land in response to the increased demand.”

We believe that comparing values of entire property before and after an easement is inimical to the concept of fair market value. As set forth in the quoted language, the value appears to be based on the value of a farm operation, not on the fair market value of property.

This is especially true in the farm and ranch sector, where an operator may have many different components to a farm or ranch, some of which may be totally unrelated to the others. The fact that an operator can mitigate the loss of the use of conserved land by increased use of other components should not reduce the fair market value of the land taken.

Similarly, the fact that conserved land in one area might increase value of another part of the same property should not be an offset to the fair market value of the land that is encumbered. To do so would be to consistently undervalue an easement, because loss of one parcel would seem to invariably create greater demand for adjacent parcels.

This situation is different from that in which a railroad easement, for example, might bisect a field or an operation. In such cases, the entire field may lose value for farming as a result of the easement, or as a result of loss of access from one part to the other. Such factors are properly considered in an appraisal.

The differences between that scenario and the FRPP situation are: (1) in the railroad example, the railroad right of way is an integral part of the larger field, whereas the FRPP does not indicate any requirement to demonstrate a nexus between the conserved area and the rest of the property, (2) the right of way causes direct impacts to the larger field, whereas the FRPP example and language describes only indirect impacts.

The FRPP definition of fair market value appears to go far beyond the Yellow Book criteria and should be adjusted accordingly.

2. Impervious Surfaces Requirement

The issue of the amount of impervious surfaces in a property that are allowed in order to qualify a parcel for the FRPP is of great significance to our members in the Northeast, where FRPP is used effectively. We have heard from a number of state Farm Bureaus and producers that the current 2 percent limitation is insufficient and is an impediment for participating in the program for many producers. Farms are smaller in the Northeast, and barns and greenhouses necessary to make operations there viable can easily exceed the 2 percent limit.

The FRPP is particularly important and successful in the Northeast. The program is very important to preserve open spaces and to buffer producers against the significant development pressures that confront farmers in that part of the country. In many cases, the FRPP and matching state programs are the only things keeping the lands in agriculture and the spaces open. Also, having barns, greenhouses and other structures that count against the “impervious surfaces” requirement are the only way that farmers stay in business so that the spaces stay open and the lands stay in productive agriculture.

It is unclear whether the proposed waiver to allow 6 percent of an individual's property to be in impervious surface is sufficient to address the needs of Northeast farmers. We defer to our state Farm Bureaus in the Northeast for the specific requirements that they need in order for their members to be able to participate in the FRPP. We encourage the agency to seriously consider the comments provided by them and the needs of Northeast farmers in this regard. The Northeast is one area where participation in the program is critical in order to achieve its goals and objectives, and we strongly urge you to work closely with farmers in the region to accommodate their needs.

3. Eligibility of Forest Lands

We support the concept of providing greater flexibility for inclusion of forest lands that are incidental to the farming operation for the same reasons set forth in the discussion on impervious surfaces, above. The increase in eligibility from not more than one-half to not more than two-thirds forest lands is a step in that direction.

As indicated in the notice, farms in the East are unique, and programs that include these areas must be flexible enough to encompass that uniqueness. The Farm and Ranch Lands Protection Program must encourage protection of such lands, not encourage radical changes to the landscape in order to qualify for the program.

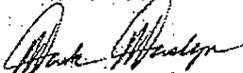
4. The Indemnification Provision Should be Clarified

The notice correctly states that the standard land trust agreement contains an indemnity provision from the landowner, where there is just the landowner and the grantee of the easement. In the FRPP situation, however, there is a third party partnership entity involved. In such situations, landowners should not be required to indemnify the United States in situations not under their control or for which they are not responsible. There may be situations where the partnering entity might be responsible for a particular situation on the property. The partnering entity should be required to indemnify the United States in those situations.

Addition of clarifying language might be helpful, such as: "The conservation easement must include an indemnification clause requiring landowners to indemnify and hold harmless the United States from any liability arising from or related to their ownership or use of property enrolled in the FRPP" (new language underlined).

We appreciate the opportunity to offer comments on the Farm and Ranch Lands Protection Program. We look forward to working with the agency to achieve the program's successful implementation.

Sincerely,



Mark Maslyn
Executive Director
Public Policy