

CIVIL RIGHTS IMPACT ANALYSIS
Farm and Ranch Lands Protection Program

Agency: US Department of Agriculture
Natural Resources Conservation Service (NRCS)

Subject: Civil Rights Impact Analysis
Farm and Ranch Lands Protection Program Interim Final Rule
2008 Farm Bill

A review of the interim final rule, Farm and Ranch Lands Protection Program (FRPP), has been directed towards the identification of actual or potential civil rights issues. In this regard, the review analyzed the rule to ensure compliance with Departmental Regulation (DR) 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture"; and DR 1512, "Regulatory Decision Making Requirement." The review reveals no factors indicating the final FRPP rule would have disproportionate adverse civil rights impacts for NRCS producers who are minorities, women or persons with disabilities.

BACKGROUND

The FRPP is a voluntary program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, Tribal, or local governments and non-governmental organizations with existing farm and ranch land protection programs to purchase conservation easements. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) reauthorized the program for fiscal years 2009 through 2012.

USDA works through State, Tribal, and local governments and non-governmental organizations to conduct the FRPP. These entities acquire conservation easements from landowners. Participating landowners agree not to convert their land to non-agricultural uses and to develop and implement a conservation plan for any highly erodible land. All highly erodible lands enrolled must have a conservation plan developed based on the standards in the NRCS Field Office Technical Guide and approved by the local conservation district. Landowners retain rights to use the property for agriculture. To participate, a landowner submits an application to an entity—a State, Tribal, or local government or a non-governmental organization—that has an existing farm or ranch land protection program. The NRCS State Conservationist, with advice from the State Technical Committee, awards funds to qualified entities to purchase perpetual conservation easements.

LEGISLATIVE CHANGES

1. Amend the definitions of eligible entity and eligible land.
2. Expand the program purpose to protecting agricultural lands by limiting non-agricultural uses, realign the program towards facilitating and providing funding for the

purchase of conservation easements by eligible entities, place terms and conditions under which the assistance will be provided including the length of an agreement between the Agency and eligible entity.

3. Allow for the inclusion of forest land that contributes to the economic viability of an agricultural operation or serves as a buffer to protect an agricultural operation.
4. Require the establishment of a certification process by which the Secretary will directly certify eligible entities; however the establishment of the specific process is left to the discretion of the Secretary.
5. Require that to be certified, an eligible entity must have a plan for administering easements consistent with FRPP purposes, the capacity and resources to monitor and enforce conservation easements, policies and procedures to ensure long-term integrity of conservation easements, timely completion of acquisitions, and timely reporting of use of funds.
6. Require that the Secretary hold a contingent right of enforcement in the easement, but facilitate the purchase of easements by third parties.
7. Require that an eligible entity be authorized to use its own terms and conditions so long as such terms and conditions are consistent with the purposes of the program, permit effective enforcement of the conservation easement or other interest and include among other terms a limit on the impervious surfaces to be allowed that is consistent with the agricultural activities to be conducted.
8. Require that effective on the date of enactment, the fair market value of the conservation easement or other interest in eligible land be determined on the basis of an appraisal using an industry approved method, selected by the eligible entity and approved by the Secretary.

CIVIL RIGHTS IMPACT ANALYSIS

The Civil Rights Impact Analysis (CRIA) is directed towards the identification and examination of actual or potential Civil Rights implications that may adversely impact the participation of protected group members. The purpose is to identify all the various adverse implications the proposed FRPP rule will have on each affected group and rationally and reasonably dispose of each. The theory of discrimination applied to the rule is disparate impact. Disparate impact is manifested when on the surface the situation appears the same for all, but there is a different effect. The analysis evaluated the extent to which the various populations are affected by the rule, and how the impact is manifested. The review and analysis examined: (A) the rule and general provision; (B) administration and development; (C) historical participation data; (D) eligibility criteria; (E) outreach strategy; (F) Conclusion; and (G) NRCS Civil Rights Director's certification. The examination sought to determine:

- what segment of the population is affected by the rule;
- if all the affected groups will be provided the same opportunities to comment on the rule during the public notification period and participate in the decision-making or rulemaking process for FRPP;
- if all protected group members historically were provided the same opportunities to participate in similar NRCS programs; and
- if all protected group members were provided the same information in order to determine whether or not they wished to participate in FRPP, or any similar NRCS programs.

In accordance with DR 4300-4, a Civil Rights Impact Analysis (CRIA) is being submitted for review. The CRIA states that the revisions and clarifications to the previous regulation apply equally to all participants in the programs affected by the rule.

Based on our analysis of the rule, there is no evidence to suggest the interim final rule will negatively and disproportionately affect any members of protected groups. All programs and organizations affected by the rule operate nationwide; hence, all geographic locations would be similarly affected by the revisions to 7 C.F.R Part 250.

A. General Provision

Urban sprawl continues to threaten the Nation's farm and ranch land. Social and economic changes over the past three decades have influenced the rate at which land is converted to non-agricultural uses. Population growths, demographic changes, large lot development, expansion of transportation systems, and economic prosperity have contributed to increased agricultural land conversion rates. Increased population, growing affluence, and an expanded transportation infrastructure have accelerated the depopulation of the urban centers and have resulted in the conversion of farm and ranch land.

Between 1960 and 1990, metropolitan area population grew by 50 percent, while the acreage of developed land increased 100 percent. About 45 percent of new construction between the years of 1994 and 1997 occurred in rural areas, with nearly 80 percent being land bordering urban areas. Overall, this translates to over 2.2 million acres being converted per year (USDA, Maintaining Farm and Forestland In Rapidly Growing Areas, 2000). The National Home Builders Association forecasts an expansion of 1.3 to 1.5 million new homes per year through 2010 (USDA, Maintaining Farm and Forestland In Rapidly Growing Areas, 2000).

As a result of these land use changes, there is growing national interest in protecting farm and ranch lands. Once developed, productive topsoil is effectively lost forever, placing the Nation's future food security at risk. Furthermore, land use devoted to agriculture provides other significant public benefits, including environmental quality,

historic preservation, and scenic beauty.

Congress continues to recognize the importance of protecting farm and ranch lands by reauthorizing the Farm and Ranch Lands Protection Program in the Food, Conservation, and Energy Act of 2008. The FRPP is a voluntary program that helps farmers and ranchers keep their land in agriculture. From 1996 through 2007, FRPP has enrolled over 533,000 acres in cooperation with more than 400 entities in 49 States. This rule sets for the policy for the Natural Resources Conservation Service (NRCS), agent of the Credit Commodity Corporation (CCC), to provide program and technical assistance to eligible participants in implanting this program.

B. FRPP Administration and Development

The Secretary of Agriculture has delegated authority to implement FRPP to the Chief of NRCS.

The Chief may implement FRPP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

C. Historical Participation Data

Due to the non-availability of sufficient historical compatible data a barrier analysis on participation was not conducted. Historical data has been maintained, however it has been deemed unreliable due to the fact it does not include information on the number of program participants with disabilities, nor does it differentiate between whether small business entities are male or female owned.

D. Eligibility

The FRPP is a voluntary program. In order to qualify, farmland must: be part of a pending offer from a State, tribe, or local farmland protection program; be privately owned; have a conservation plan for highly erodible land; be large enough to sustain agricultural production; be accessible to markets for what the land produces; have adequate infrastructure and agricultural support services; and have surrounding parcels of land that can support long-term agricultural support services; and have surrounding parcels of land that can support long-term agricultural production. Depending on funding availability, proposals must be submitted by the eligible entities to the appropriate NRCS State Office.

E. Outreach Strategy

The Easement Programs Division (EPD) will work in partnership with the NRCS Outreach Division to locate and provide information to protected groups. A press release announcing the issuance of the newly proposed FRPP rule will be electronically sent to

universities and colleges specifically identified with a protected group. The press release will contain a contact person for obtaining further information.

Mailing lists have been obtained and information regarding the rule will be sent to land-grant Universities, 1890 Universities, HACU's, colleges and universities located in U.S. Territories, and Tribal Colleges and Universities.

The EPD will work with the Outreach Division to submit information for publication in the national newsletters of several national agricultural organizations. These include American Agri-Women, WAgN (Women's Agricultural Network), MANRRS (Minorities in Agriculture, Natural Resources, and Related Sciences), WIFE (Women Involved in Farm Economics), and the National AgriAbility Project (20,000-30,000 farmers with disabilities receive their Breaking New Ground Newsletter). Significant media outreach will be undertaken to acquaint under served producers with the provisions of FRPP. Spanish-translated press releases and informational materials will be made available.

The locally led process at the service centers level is key and provides for input from a broad range of agencies, organizations, businesses, and individuals in the local areas who have an interest in natural resource management. Through this input process there is the opportunity for minority and socially disadvantaged groups to be informed regarding FRPP. Outreach efforts are made to ensure that the diversity of residents, landowners, and land operators in the local area are well represented in this process.

States will make every effort to reach all eligible producers through various means including newspapers, magazines, local publications, radio, personal contacts, meetings, newsletters, churches, organizations, community advocacy groups, etc.

Special efforts will be made to distribute the information regarding the FRPP through personal mailings to potential participants in NRCS conservation programs who are minorities, women, or persons with disabilities.

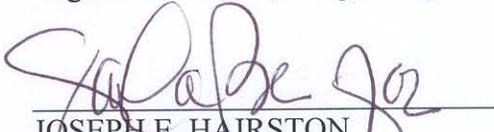
F. Conclusion

Therefore, our review of the interim final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. When the rule is published, all populations will be provided the opportunity to comment on the rule. The data presented indicates women, minorities, and persons with disabilities are participating on an equitable basis in NRCS conservation programs.

Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. The provisions of FRPP apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status.

G. Certification

I certify that the following review and analysis has been conducted in accordance with Departmental Regulation 4300-4, "Civil Rights Impact Analysis"; 7 CFR 15d, "Nondiscrimination in Programs and Activities Conducted by USDA"; and Departmental Regulation 1512-1, "Regulatory Decision-Making Requirements."



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9/16/08
Date