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What follows is a transcript of the Question and Answer portion of the February 18, 2011 Webinar on the Farm and Ranch Lands Protection Program (FRPP) Final Rule. American Farmland Trust's Farmland Information Center hosted the Webinar. Answers were provided during the program or afterward by Mark Rose, the Natural Resources Conservation Service National FRPP Program Manager.

General/Unspecified

Q: Does this Final Rule apply to 2011 applications?

A: Yes

Q: Can we see the program manual?

A: <http://directives.sc.egov.usda.gov/> Click on "Manuals" on left side of screen, Go to "Title 440 – Programs" and go to "Part 519". The manual is available as one or in sections. There should be a PDF conversion tab in the lower right of the screen. This site will be updated as FRPP policy is updated.

Q: How can you apply if you haven't done any FRPP grants before, but are accredited and have done state PDR grants?

A: May apply as an eligible entity.

Q: Regarding the new language in the 2008 Farm Bill on land eligibility, if land has been identified in a municipal or county farmland protection plan as a priority for protection, is that land eligible for FRPP?

A: Answered during Webinar @48:24

Q: On the historical resources, does it have to be registered with the State or National Registry?

A: The site must meet one of the criteria below

- (i) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (16 U.S.C. Section 470 et seq.)).
- (ii) Formally determined eligible for listing in the National Register of Historic Places (by the State historic preservation office or Tribal historic preservation office and the Keeper of the National Register in accordance with section 106 of the National Historic Preservation Act).
- (iii) Formally listed in the State or Tribal register of historic places of the State historic preservation office or Tribal historic preservation office.
- (iv) Included in the State or Tribal historic preservation office's inventory with written justification as to why it meets National Register of Historic Places criteria.

Q: Can landowners, who have received federal grant funds in the past, such as for CREP, be eligible for FRPP?

A: Landowners may participate in past, present or future NRCS cost share programs. FRPP lands may also be eligible or enrolled in CRP or CREP where an easement is not encumbered. FRPP land cannot be enrolled in GRP or WRP where an easement is encumbered on the farm.



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Q: Is there a minimum for length of time of ownership of the land prior to the easement enrollment?

A: No

Q: What if the landowner wants a portion of their funding over time (installments) for tax reasons? So at closing they sign an IPA agreement for whatever portion of the non-FRPP funding they want over time which obligates the entity or a funding partner (normally a County or Township) to pay that landowner. Can we use FRPP funding on these projects?

A: FRPP has been used with a State IPA program. The FRPP portion of the easement payment must be paid in full at time of closing. However, FRPP funds can be paid out in equal payments over a period of 4 years after closing.

Q: For NGOs, please clarify amount of stewardship "endowment" NRCS requires; is it per easement or in total?

A: Answered during Webinar @ 53:12

Q: Regarding NGOs selling conservation easements on lands they own - is that or could that be allowed? For lands that are for sale that we want to purchase, it would most of the time be easier to purchase with loans and work out details with NRCS (which takes time) from our end to get money and pay off loans, rather than work with a seller through this process beforehand. Can a NGO be a qualified landowner - either perpetually or as an interim owner?

A: Answered during Webinar @ 49:47.

Q: If a new entity wants to apply for FRPP, how do we obtain application, guidelines, appraisal specs, submission requirements, and other requirements?

A: Contact your FRPP Program Manager in your state's NRCS Office.

Q: The 30-day minimum deadline for announcing rankings allows for situations in which an NGO really must rush to assemble and submit an application. Is there a way to provide NGOs additional notice?

A: Each State Conservationist develops a State FRPP plan each year. This plan is to have one or more ranking dates identified. The FY12 FRPP plan is to be developed no later than July 1, 2011. I would encourage cooperating entities to discuss this with their State Conservationist

Q: Is wind power development a "development right" that can be donated to a cooperating entity qualify for an FRPP easement?

A: NRCS National Office (NHQ) is aware of the "wind rights" that could be available or held by a landowner. However, NHQ has not provided any policy guidance on how States should handle this. The landowner can utilize wind or solar power for farm use but commercial enterprises of any kind are prohibited within the FRPP easement.

Certification

Q: How do I begin the entity-certification process? Where do I find application materials and instructions? Is there an application deadline or rolling admission?

A: NHQ is drafting guidance to NRCS State Conservationists on certified entities. The draft policy proposes the entity will request certification from the State Conservationist at the same time the application for funding is submitted. Instructions for certification are not available yet.



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The State Conservationist will establish one or more application periods for FRPP during the fiscal year.

Q: Does being certified vs. non-certified have any bearing on the scoring or ranking affecting funding? Can you clarify the difference between non-certified and certified entities and their ability to obtain successful grants?

A: Answered during Webinar @ 24:47 and 59:25

Q: Regarding certification, will The Nature Conservancy or other national groups be considered as a whole or on a state by state basis? How will this pertain to public PACE programs with State and County participation?

A: Answered during Webinar @ 56:24

Q: If you have more than one NGO working together (say one has negotiating expertise, the other has stewardship expertise) how will certification work? Will both entities need to be certified to have the benefits of certification?

A: Answered during Webinar @ 38:53

Q: We have 24 conservation easements and 5 are FRPP projects. Do we need a waiver to be a certified entity? What is involved in getting a waiver?

A: Answered during Webinar @ 22:56

Q: Will LTA Accreditation accompanied with significant CE acquisition history be sufficient for certification, if there is nominal FRPP history - say one CE purchase?

A: Answered during Webinar @ 55:12

Q: Does a land trust need to be accredited to qualify for certification?

A: No.

Q: Are eligible entities required to become certified?

A: No.

Q: Please explain in more detail how closing efficiency is measured. What is the start date for a project? The original date of signing the Coop. Agreement - or the date the project was added as a substitution to the list (if that was the case)?

A: Answered during Webinar @ 28:55

Q: Can a certified entity receive an advance of funds for closing or only for reimbursement? How do certified entities request an advance of funds?

A: Answered during Webinar @ 37:31

Q: Will fund distribution for the 10% selected for review be delayed until the review is completed? If so, how long do you anticipate the review will take?

A: Policy is still being drafted. A decision has not been made if reimbursement will be held pending the 10% review. The review of the deed, title insurance policy and a technical review



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of the appraisal will be completed within 30 days of the date NRCS received the reimbursement request from the certified entity.

Cooperative Agreements

Q: Since there will now be 5 year cooperative agreements that carry forward into the next farm bill period will any potential new elements of the program be eligible for consideration in these agreements?

A: Answered during Webinar @ 44:25

Q: Can a FY10 Coop. Agreement to be amended to reflect the new rules? What if you are a certified entity?

A: Answered during Webinar @ 46:21

Q: Can entity that has already applied for and received funding still apply for the certification process?

A: Answered during Webinar @ 36:36

Q: If an entity has an existing coop agreement from 2009 or 2010 and wants to now add an entirely new project to the agreement, can it be amended or are they now required to get a new agreement?

A: For FY2011, NRCS will be requiring all new agreements be developed. FY2009 and FY2010 agreements will not be amended to add FY2011 funds or parcels.

Q: Is substituting a landowner parcel considered an amendment?

A: For FY2009 and FY2010, parcels added due to substitution will require an amendment, if the parcel to be substituted is not already listed on the Agreement Attachment.

For FY2011 agreements, the entity will need to include potential substitute parcels on the agreement attachment. Substitute parcels may be added to the attachment up thru the end of the fiscal year of the current year of funding (9/30/11 for FY11, 9/30/12/ for FY12, etc.).

Substitute parcels cannot be added to the FY11 attachment after the end of the fiscal year. The entity may request unfunded parcels under an attachment be deferred to the next fiscal year of funding. Ranking rules will apply to parcels deferred to the next fiscal year.

Q: Can you add parcels to the agreement in the year of funding. Or is this only if the State Technical Committee opens the application window a second time?

A: See above – Also the State Conservationist will establish one or more applications periods during the Fiscal Year.

Q: Please explain more fully the suggestion to "get all possible parcels on the list before the end of the FY." We've been told by our state office that we cannot include more parcels on the list than there are funds in the agreement - so that if a parcel falls off the list (because the landowner backs out, for example) - we have to substitute by adding a whole new parcel. If we could start with additional parcels, in case there is some attrition that would simplify our process.

A: Similar to the above two answers. An entity is encouraged to include adequate parcels for substitution on the current attachment year. Unfunded parcels may be deferred to the next fiscal year. The deferred parcels must be ranked in the new funding year as per policy.



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Q: If there are old FY FRPP funds that have not been utilized yet, can these funds be allocated to a new parcel or are funds specifically targeted for the original parcel designated?

A: If all eligible parcels on an attachment have been acquired, including eligible substituted parcels, and a balance of funds exists, the attachment is considered complete and any remaining funds will be de-obligated. In other words, the funds obligated to an attachment must be used only for the parcels listed on that attachment.

Q: How are turn-back funds used at the end of the FY? Can they only be used for parcels already enrolled through the current FY application process or could an entity bring forward new projects at that point?

A: See above – in addition, prior year (or turn-back) funds may be used to cover cost over-runs that may occur from agreements in other states. Prior year funds cannot be used to fund new parcels in the current agreement or transferred to fund new parcels in any other agreement.

Easement Document

Q: Please discuss FRPP and severed minerals? For example, can FRPP funds be used to purchase easements on properties with severed minerals and moderate oil & gas potential?

A: Answered during Webinar @ 41:02.

Q: Is NRCS leaning toward eliminating FRPP from the Marcellus region? Or, if more toward allowing participation with restrictions, how would you foresee the appraisal being handled (criteria for content and appraiser) and paid for?

A: Appraisals for FRPP are for surface rights only. NRCS NHQ is developing guidance for State Conservationists to assess the potential risks to an FRPP easement when mineral rights are leased or owned by a third party. Mineral exploration and extraction can be done with an FRPP easement in place. The area of disturbance must be outside of the easement area or when within the easement area, the impact to the prime and State soils and the farming operation are minimal. Guidance being developed will allow the State Conservationist to make a determination to accept or reject an easement where mineral rights may be executed.

Q: Does NRCS need an original easement deed upon closing or does a copy of the signed deed suffice? May certified entities use their own easement deed models, or must the state NRCS template be used?

A: Answered during Webinar @ 51:05

Q: Do you have a sample conservation easement deed? We would like to know what FRPP would like beyond a 2% impervious limit.

A: The impervious surface limitation is in place to protect the conversion of prime and unique soils to other uses. The expansion of an ag operation where conversion of soils leads to an increase in impervious surface is allowed up to 2%. The waiver is used, primarily in eastern and northeast states where farms are smaller, thus the 2% would result in a smaller area available for farm expansion. A farm may require greater than 2% (up to 10%) to remain viable and prevent the farm operation from being discontinued due to financial instability. There is really no difference between a “2%” deed and one with a higher impervious surface. The entity uses their own terms within the NRCS guidelines and policy for developing the easement.

Appraisals



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Q: What steps will a certified entity follow to obtain an Appraisal Technical Review and is a technical review required on every appraisal? Will this be conducted by NRCS and is there a time-frame for NRCS to complete these reviews? Will the technical appraisal review happen after closings?

A: Answered during Webinar @ 26:54

Q: Is the 'technical appraisal review' the same thing as a yellow book review appraisal?

A: The technical review of an appraisal is a desk peer review of the appraisal report. The review looks at the appraisal to determine that the appraiser used proper methodology and adequately justified the value of the easement and followed NRCS specifications. The review does not make a determination of the value presented, only that the appraiser justified and presented factual information to arrive at the value in the appraisal report. Yellow book is an appraisal method used by an appraiser to determine value of a property.

Q: What happens if a certified entity reviews and approves an appraisal that FRPP does not feel meets program standards upon the 10% review?

A: Policy is still being developed for certified entities. If the State Conservationist identifies a deficiency of the appraisal, title or deed of an acquired parcel submitted for reimbursement by the certified entity, the State Conservationist will work closely with the entity to resolve the deficiency. The agreement to acquire a parcel under FRPP is between the entity and NRCS. Certified entities have achieved this distinction because they have achieved a higher standard of easement acquisition and are knowledgeable about FRPP easement acquisition. NRCS does not provide direct oversight to certified entities during easement acquisition. However, when any questions arise regarding policy or procedures, the certified entity should contact NRCS to alleviate any potential deficiencies.

Q: What form of appraisals are acceptable, and how long will they be deemed valid until closing?

A: Appraisals for FRPP are valid for 12 months prior to the closing date. Acceptable appraisals must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Standards for Federal Land Acquisition (USFLA or "yellow book").

Q: Often landowners may donate additional acreage along with a purchase of conservation easement. However, they end up needing 2 different appraisals in order to meet NRCS and IRS requirements. Can you explain why your appraisal process is different than that required by IRS?

A: Answered during Webinar @ 34:10

Entity Match

Q: Is the 25% minimum entity cash match from the Purchase price or easement value

A: The entity is responsible for 25% purchase price (appraised fair market value minus the landowner donation).

Q: Can the 25% match be in-kind or a bargain sale easement count towards the 25% match?

A: Answered during Webinar @ 32:15

Q: No bargain sale: Cooperating Entity (CE) share = 50%, NRCS share = 50%;



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Bargain Sale: Landowner donates up to 25%: CE share reduced by same amount, NRCS = 50%;

Landowner donates more than 25%: CE = ½ of remainder, NRCS = ½ of remainder.

A: Correct. See the matching funds chart in Program Manual,

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Q: What is the maximum landowner donation?

A: Answered during Webinar @ 32:24 and 35:05

Q: Can Scenic Byway or Military reservation funds be used as match?

A: No federal funds may be used as a source of the entity’s 25% match.

Q: Can we see the matching funds chart in the program manual?

A: Available on-line at <http://directives.sc.egov.usda.gov/> Click on “Manuals” on left side of screen, Go to “Title 440 – Programs” and go to “Part 519”. The manual is available as one or in sections. There should be a PDF conversion tab in the lower right of the screen. This site will be updated as FRPP policy is updated.

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