

August 13, 2010

Matthew T. Ponish  
National Environmental Compliance Manager  
USDA FSA CEPD, Stop 0513  
1400 Independence Avenue, SW  
Washington, DC 20250-0513

Re: Emergency Conservation Program  
Farm Service Agency, USDA  
Record of Decision

Dear Mr. Ponish:

The American Horse Council (AHC) appreciates the opportunity to submit these comments on the Record of Decision (ROD) regarding the changes proposed to be made to the Emergency Conservation Program (ECP) announced on July 16, 2010. Under the Proposed Action, Farm Service Agency (FSA) would expand ECP eligibility to other types of farmland, including timberland, a roadbed area of land that is eligible for ECP, and also farmsteads, feedlots, and grain bins.

### **American Horse Council**

The AHC is a Washington-based association that represents the horse industry before Congress and the federal regulatory agencies. The AHC includes individual members and 160 equine organizations representing all horse breeds and virtually every facet of the horse industry, including owners, breeders, veterinarians, race tracks, horse shows, rodeos, farriers, breed registries, horsemen's associations, commercial suppliers, recreational riders and state horse councils.

The horse industry is an important part of the U.S. livestock industry. According to *The Economic Impact of the Horse Industry in the United States*, a 2005 study done by Deloitte Consulting for the AHC, the U.S. horse industry has a total economic impact of \$102 billion on the U.S. economy, supports 1.4 million jobs on a full-time basis, and involves over 4 million Americans who pay nearly \$2 billion in taxes each year. The study also estimates the horse population in this country has reached 9.2 million. The breeding and training segment of the industry has a total economic impact of \$6 billion on the economy, supports 100,000 jobs and involves 425,000 horses.

### **AHC Concerns**

The AHC does not oppose FSA's decision to develop regulations consistent with the Proposed Action, which would expand the land eligible for ECP benefits to include timberland, farmsteads, feedlots, farm roads, farm buildings or grain bins.

But the AHC believes that horse breeders and horses are eligible for ECP benefits, just like other livestock producers. The AHC is concerned with statements regarding that eligibility that appear in the ROD, the September 2008 Supplemental Environmental Impact Statement for Emergency Conservation Program (SEIS), and the notice of Proposed Action. These statements seem to conclude that no horses are eligible for ECP benefits. The AHC disagrees and our comments are directed at that apparent perception within USDA.

The ROD notes that “An agricultural producer is defined as an owner, landlord, tenant, or sharecropper of a farm that is used to produce crops for *food or fiber* in a commercial operation that occurs on an annual basis.” (Italics added.) (ROD - page 3.)

The SEIS states that “During the development of alternatives, FSA considered expanding eligibility to land supporting horses used for recreation, commercial or other purposes (such as race horses). This alternative was eliminated from further consideration because it would require a statutory change.” (SEIS - page 2-8)

Finally, in the document announcing the Proposed Action, it states that FSA considered several alternatives regarding expanding eligibility, including one alternative to “expand eligibility to include land supporting horses used for recreation, commercial, or other purposes (such as race horses).” But FSA eliminated this from further study, noting:

Agricultural programs have traditionally not treated those activities as ‘agricultural’ production for purposes of ‘farm’ programs; this alternative was therefore considered for purposes of this exercise to be beyond the scope of the agency’s authority. This issue can, however, be revisited when actual regulations are proposed for the program.

Admittedly, this is not a definitive or final statement regarding the eligibility of horses or horse farmers or ranchers for ECP benefits. Indeed, there is a note that this issue might be addressed in a possible additional rulemaking in the future. Nonetheless, based upon prior actions by USDA regarding the eligibility of any horses for federal disaster assistance and the seemingly continued position within USDA that horses *per se* are not eligible for federal disaster assistance, even in the face of Congressional action, the AHC is submitting these comments.

### **Emergency Conservation Program**

The Emergency Conservation Program (ECP) provides emergency funding and technical assistance to *farmers and ranchers* to rehabilitate farmland damaged by natural disasters, such as wind, erosion, floods, hurricanes, heavy snow, ice and/or high wind or other natural disasters. Cost-sharing may be offered for activities such as removing debris, restoring fences and conservation structures, and re-leveling or grading of farmland.

It is our understanding that commercial horse breeders are eligible for ECP funds because such funds are not predicated on any “food or fiber” production requirement; rather eligibility is based on environmental priorities for *farmers and ranchers* involved in agriculture. Unlike many USDA Fact Sheets describing federal programs available to livestock producers, the USDA Fact Sheets describing the Emergency Conservation Program does not specifically list “eligible livestock.” Rather it provides that *farmers and ranchers* are eligible once a disaster is declared.

The underlying law requires that to be eligible for ECP benefits one must be an “Agricultural producer.” There is no requirement that the “crop” produced, in this case horses, be used for any particular purpose. Unfortunately, the current FSA handbook provides that “livestock for ECP purposes are those used for *food or fiber*. Animals that are ineligible include those used for recreational activities or recreational businesses, such as race horses, pack animals, rodeo stock, and polo ponies.” (Italics added.) The handbook has not been amended even though the 1949 law upon which the exclusion of horses is based has been repealed, as discussed hereafter.

### **Congressional Action and Intent**

The horse industry would like to note the changes that Congress has made over the last several years in the area of federal disaster assistance and how it applies to the horse industry. Fundamental statutory changes have been made that USDA should consider when it reviews any federal disaster assistance programs, including ECP, that may affect the horse industry.

By way of background we should note that Congress has taken several deliberate steps over the last several years to enact legislation clarifying that commercial horse farms are eligible for a variety of federal emergency assistance. This clearly demonstrates Congress’ intent that horses and horse breeders be considered a part of “production agriculture” and eligible for the various emergency programs available to other livestock and livestock producers. These legislative changes include the following.

#### 2005 Amendments

In 2005, Congress passed legislation adding horses to the list of livestock eligible for various federal emergency assistance programs under the limits enjoyed by other livestock and crop producers. (See attached Exhibit 1.)

Importantly, this legislation also repealed the language in the outdated Agricultural Act of 1949, which has been the primary obstacle to horses being eligible for federal assistance. That law limited emergency funds to producers of horses “used for food or fiber or the production of food or fiber. (See attached Exhibit 1.) This 1949 law was the basis for distinguishing horses based on the “food of fiber” definition. Whatever limitations, or perceived limitations, on horses that stemmed from that 1949 statute are no longer valid. Repealing this law has eliminated such limitations.

## 2008 Farm Bill

The last Congress passed the Food, Conservation, and Energy Act of 2008, commonly known as the Farm Bill. That bill included several more provisions that made horse breeders eligible for emergency funds.

One provision in the bill made “equine farmers and ranchers” and “equine farming and ranching” eligible for emergency federal loans following a disaster. This change specifically included “equine farmers and ranchers” within the group of agricultural producers eligible for these federal emergency loans. (See attached Exhibit 2.)

This provision is particularly relevant because farmers and ranchers are eligible for ECP benefits.

The Farm Bill also included a new disaster assistance program that provides relief funds to farmers and ranchers who suffer losses in areas that are declared disaster areas by USDA. This program is intended to make funds available to producers sooner following a disaster. Horses were specifically included within the definition of livestock eligible for this program. (See attached Exhibit 3.)

A horse is an “agricultural product” of a farming operation, regardless of the activity in which it may ultimately be used. The initial breeding and raising of horses are part of “agricultural production.” The stallions, mares, foals and horses in training are used as part of a farming operation.

We hope that the USDA will review the current regulations regarding ECP funds and amend the regulations and handbook to treat horse breeders and horse farms and ranches just like other agricultural produces for purposes of emergency conservation funds, as Congress intended.

Given that eligibility for ECP is not based on, or limited to, specific animals and that horse breeders and their stallions, mares, foals and yearlings are part of “agricultural production,” a fair reading of the statute would conclude breeding/training farms are eligible for ECP funds. The ROD, SEIS and this Proposed Action appear to continue to incorrectly lump these horses into the category of recreational horses, preventing them from receiving ECP assistance. The statements made in these documents should be amended or at least not given weight when making any decisions regarding the eligibility of horses and horse breeders for ECP benefits.

## **Conclusion**

When FSA considers whether horses and horse breeders are eligible for ECP benefits in its various activities, the AHC suggests that the Agency take into consideration (1) The repeal of the 1949 statute referencing “food and fiber;” (2) Various Congressional changes to other USDA programs regarding disaster relief for the horse industry; and (3) A fairer reading of FSA’s own regulations and handbook.

Horse breeders should be eligible for ECP funds following designation of a disaster. Not only are they involved in production agriculture and producing livestock as part of a commercial agricultural businesses, but the various Congressional laws noted above show the Congressional intent that horses and horse breeders be treated like other livestock producers with respect to all federal emergency programs.

Thank you again for the opportunity to submit these comments. If you need any additional information, please contact us.

Sincerely,

James J. Hickey, Jr.  
President