

FLAG



FARMERS' LEGAL
ACTION GROUP,
INCORPORATED

360 North Robert Street Suite 500
Saint Paul, Minnesota 55101

Phone: 651 223.5400
Fax: 651 223.5335

Internet:
lawyers@flaginc.org

Web site:
www.flaginc.org

January 16, 2007

Via Electronic Mail (Sent to: Herbert.Mitchell@sba.gov)

Mr. Herbert L. Mitchell
Associate Administrator for Disaster Assistance
409 3rd Street, SW.
Washington, DC 20416

Dear Mr. Mitchell:

Re: RIN 3245-AF46
Interim Rule for Small Business Administration Disaster Relief to Small
Business Concerns Damaged by Drought, 71 Fed. Reg. 75,407 (December
15, 2006)

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of the National Family Farm Coalition (NFFC) and the Rural Advancement Foundation International-USA (RAFI-USA) concerning the proposed rule published at 71 Fed. Reg. 75,407-75,409 (December 15, 2006).

NFFC represents 30 grassroots farm and rural advocacy organizations serving more than 30 states. The coalition was formed in 1986 to coordinate the efforts of a growing network of grassroots organizations concerned with maintaining a family farm system of food production. NFFC's work includes education, outreach, and advocacy for stable rural communities, safe food, and the preservation of natural resources through family farming. NFFC has long been interested in USDA's implementation of farm credit, disaster assistance, and conservation programs and the administrative review procedures available to participants in those programs.

RAFI-USA is a non-profit organization based in Pittsboro, North Carolina, dedicated to community, equity, and diversity in agriculture. RAFI-USA is playing a leadership role in responding to major agricultural trends and creating a movement among farm, environmental, and consumer groups to promote sustainable agriculture, strengthen family farms and rural communities, protect the diversity of

plants, animals, and people, and ensure responsible use of new technologies. Since 1999, RAFI-USA has assisted hundreds of farmers in gaining access to federal disaster assistance programs, and has trained hundreds of farm advisors on the range of disaster assistance programs available to farmers.

FLAG is a nonprofit, public interest law center dedicated to the preservation of family farms. For more than two decades, FLAG has provided legal services to thousands of small and mid-sized family farmers throughout the nation in class action lawsuits, administrative proceedings, public education initiatives, and legislative technical assistance involving agricultural credit and farm program issues and the administrative review processes for these programs.

Lack of Coordination Between SBA and USDA Excludes Many Enterprises from Disaster Relief, Contrary to Congressional Mandate

In the supplementary information accompanying the interim final rule published at 71 Fed. Reg. 75,407, the agency makes the statement that: "SBA continues to be prohibited...from making any type of disaster loan to agricultural enterprises, as defined in [15 U.S.C. § 647]." For SBA disaster program purposes, an agricultural enterprise is a business "engaged in the production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries." 15 U.S.C. § 647(b)(1).

As the agency must know, this statutory provision was enacted in order to prevent *duplication of efforts* with other federal agencies, primarily USDA through the Farm Service Agency's Emergency Loan Program. 15 U.S.C. § 647(a); S. Rep. No. 146, 99th Cong., 2nd Sess. 527-28, *reprinted in* 1986 U.S.C.C.A.N. 42, 486-87. There was certainly no intent on the part of Congress to bar disaster relief to agricultural enterprises as a whole. Nonetheless, the lack of coordination between SBA and USDA regarding what is classified an "agricultural enterprise" has led to many business operators being excluded from relief following a natural disaster. Farmers who have taken up the call of USDA, state departments of agriculture, and other advisors and have begun enterprises that take their efforts beyond production agriculture into processing, manufacture, and marketing find when disaster strikes that SBA considers them *too agricultural* while USDA considers them *not agricultural enough*. They are left with no relief and no mechanism for reconciling the contradictory determinations of federal agencies who should be coordinating their relief efforts.

As a specific example, farmers in Northhampton County, North Carolina, whose cotton gin was destroyed by Hurricane Floyd were denied relief by both FSA and SBA. These farmers were specifically told by SBA that their ginning operation was too agricultural for disaster loan eligibility and were found ineligible by FSA because it was not agricultural enough. Thus they were ineligible for *any* disaster loans. It is not possible to reconcile Congress's desire to avoid *duplication of* benefits with this outcome.

SBA and USDA must coordinate to define their areas of eligibility in such a way as to ensure that, while efforts are not *duplicated*, there is relief available to enterprises on the borderline between agriculture and industry. Enterprises that are ineligible for FSA Emergency loans or other USDA disaster programs must be eligible for SBA business disaster loans, and vice versa. It is up to the Administration, through its agencies SBA and FSA, to close this indefensible gap.

An applicant who is denied SBA disaster relief due to a determination that the enterprise is agricultural must have this basis explicitly stated in the denial notification. The agencies should coordinate determinations in individual cases as to which program an enterprise is eligible for, and should provide a joint appeal process for applicants if the determinations are inconsistent. To reduce the likelihood of inconsistencies, the agencies should work together, with the input of stakeholders, to reconcile their categorization of what types of enterprises will be considered agricultural.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/ Karen R. Krub

Karen R. Krub
Staff Attorney
Email: kkrub@flaginc.org

cc: Kathy Ozer, NFFC
Scott Marlow, RAFI-USA