

## **Summary of Statutory Changes Made by the 2014 Farm Bill**

### **Agricultural Conservation Easement Program (ACEP) General:**

- The Agricultural Conservation Easement Program (ACEP) consolidates the provisions from three former NRCS easement programs, the Farm and Ranch Lands Protection Program (FRPP), the Grassland Reserve Program (GRP), and the Wetlands Reserve Program (WRP) into one easement program, ACEP, with two primary components, the Agricultural Land Easements (FRPP and GRP purposes) and Wetland Reserve Easements (WRP purposes).
- Acres enrolled in FRPP, GRP, and WRP considered enrolled in ACEP.
- Requires that an eligible entity or owner of eligible land agree to comply with conservation compliance requirements before they are able to receive ACEP assistance.
- Where State law prohibits permanent easements, ACEP allows the easements to be limited by the maximum duration allowed under State law.
- Adds provisions to target assistance to veteran farmers and ranchers.
- Establishes authority for use of ACEP funds ‘available until expended’ (no-year funds).
- Repeals WRP, GRP, and FRPP but makes remaining balances available for use in completing existing enrollments under the repealed programs.
- Provides authority for modification, subordination, exchange, or termination of ACEP easements and easements enrolled under the predecessor programs.
- Identifies ACEP as a contributing program authorized to accomplish the purposes of the Regional Conservation Partnership Program (RCPP) (Subtitle I of Title XII of the Food Security Act of 1985, as amended).
- Changes average Adjusted Gross Income (AGI) limitation to \$900,000, with no opportunity for a waiver, except through RCPP.

**ACEP-Agricultural Land Easements (ACEP-ALE):** include easements on eligible private or tribal agricultural land acquired by eligible entities with cost-share assistance from NRCS.

- Expands eligibility to include the protection of grazing uses and related conservation values.
- Easements on grasslands require an eligible entity to acquire the easement, there is no longer an option for the United States to hold grassland easements.
- Changes slightly the calculation of the match requirement from what was required under FRPP, such that partners must contribute a slightly higher proportion from their own cash resources relative to the amount of any voluntary landowner donations towards the purchase of an agricultural land easement.
- Provisions now exist for grasslands of special environmental significance to receive additional ACEP-ALE cost-share assistance.
- Requires all ACEP-ALE easements to be subject to an Agricultural Land Easement Plan, not just conservation plans on highly erodible soils.
- The Agricultural Land Easement Plan must include a grassland management plan component if the easement area includes grasslands.

- Provides the Secretary discretion to require conversion of highly erodible cropland to less intensive uses.
- Introduces an option for NRCS to waive the eligible entity cash contribution requirement for projects of special significance.
- Increases the methodologies that may be used by the eligible entity to determine the fair market value of the agricultural land easement to include appraisals, area-wide market analysis, or other industry approved method approved by the Chief.
- Eliminates the rental agreement option formerly available under GRP.

**ACEP-Wetland Reserve Easements (ACEP-WRE):** includes easements on eligible private and tribal lands that are acquired by NRCS directly with eligible landowners

- Landowners must own eligible land for 24 months, previous ownership requirement was 7-years.
- Enrollment of wetland reserve easements are based upon available funding and not acreage goals.
- Easement installment payment schedule changed. Easements valued at \$500,000 or less may receive at least 1 but not more than 10 annual payments. Easements over \$500,000 may provide a lump sum payment or installment payments in at least 5 but not more than 10 annual payments.
- Allows for NRCS to provide a waiver under certain criteria to enroll lands established to trees under the Conservation Reserve Program (CRP) which was previously prohibited.
- Exempts subclass “w soils” in land capability classes IV – VIII from the county cropland limitation for enrollment in CRP and ACEP-WRE.
- Requires State or other entity to provide 50 percent of the easement cost for wetland reserve easements on croplands or grasslands used for agricultural production prior to flooding from the natural overflow of a closed basin lake.
- Eliminates the 10-year restoration cost-share agreement only option.

**Summary of Programmatic Changes Made by the ACEP Interim Final Rule or Policy:**

**ACEP-General**

- Seeks comment on new definitions added for new terms including active agricultural production, agricultural land easement plan, easement administration actions, and grasslands of special environmental significance.
- Standardizes agreement expiration dates across ACEP and standardizes agreement length and extension options within each component to allow landowners, entities, and NRCS to more efficiently track deadlines, complete transactions, execute extensions, and minimize deobligation of funds as a result of expired agreements.
- Includes authority for Chief to waive non-statutory, discretionary provisions to further the purposes of the Regional Conservation Partnership Program (RCPP) consistent with the purposes of ACEP.
- Identifies criteria, requirements, and procedures for NRCS to review and authorize modifications, subordination, terminations, or exchange. Referred to as easement

administration actions. Authority to approve modification, subordination and exchanges is delegated to the Easement Programs Division Director at NRCS National Headquarters (NHQ). Authority to approve terminations resides only with the Chief.

- Clarifies that the landowner's ability to request a modification does not vest any rights with the landowner and is to enable NRCS to ensure the protection of the Federal investment.
- Clarifies that land that has unacceptable hazardous substance contamination issues is ineligible for ACEP unless and until the site has been fully remediated to NRCS satisfaction.

### **Major Changes Between ACEP-ALE and FRPP, GRP**

- Entity Certification - Revised entity certification process to streamline, add flexibility, and encourage participation as a certified entity.
  - Certification requests may be submitted on a continuous basis creating a larger window for entities to complete the necessary certification documents.
  - Locally led conservation - State Conservationist play a larger role in the review and recommendation of certification requests.
  - Use of Grant Agreement (new instrument) with Certified Entities:
    - Streamlines the entity certification review process by entity agreeing to use the standard Grant Agreement rather than make changes to align their individual specific program procedures with ACEP.
    - Allows Certified entities to use their own deed terms and conditions and puts entities in the lead to ensure the ACEP program requirements and terms of the Grant Agreement are met.
    - Certified entities will acquire and close on easements without NRCS review prior to closing and payment to allow more entity independence and streamline acquisition process.
    - Payment based on certification in the payment request submitted by the certified entity that all requirements have been met.
    - NRCS will conduct post-acquisition quality assurance reviews on a percentage of the easements closed and require remediation if issues identified.
    - NRCS certification review process has been incorporated into the quality assurance review process so certified entity subject to one set of reviews.
- Minimum Deed Terms
  - NRCS, in consideration of partner input, has developed a set of standard ALE minimum deed terms to provide flexibility for a larger range of partner missions while ensuring that ACEP statutory program requirements are addressed. Use of the standard ALE minimum deed terms will:
    - Streamline program delivery by reducing deed language negotiation and review processes.
    - Increase transparency of program requirements by providing upfront ability for entities to review the terms needed to participate and reduce the need for clarification later in the process.

- Ensure the equitable treatment of all entities and landowners by requiring the same minimum terms for all ACEP-ALE participants and landowners.
    - Improve the consistency in the long-term management and enforcement of easements funded through a national program by ensuring all statutory and regulatory ACEP requirements are met in a minimal set of standard terms.
    - NRCS welcomes comments on the ALE minimum deed terms during the regulation comment period. The ALE minimum deed terms are provided through a link within the ACEP Interim Final Rule.
  - NRCS has introduced more flexible and streamlined options for the development and review of easement deeds. Eligible entities may use their own deed terms and have 3 options for incorporating in the ALE minimum deed terms:
    - Option 1: Entity attaches the ALE minimum deed terms as an addendum to the entity's easement deed. Requires only State-level verification that addendum is executed and attached.
    - Option 2: Entity uses its own tailored deed language for each transaction and incorporates the ALE minimum deed terms into the body of the deed. Requires National-level review of individual deeds.
    - Option 3: Entity uses approved template language for every transaction that incorporates the ALE minimum deed terms. Requires National-level review of the template, then only State-level review of the individual transactions that use the approved template.
  - Eligible entities may incorporate their own terms that are more restrictive than the ALE minimum deed terms as the ALE minimum deed terms include inherent flexibilities that allow the entity in consultation with NRCS to authorize:
    - The location or relocation of building envelopes after the easement is acquired and the building of structures outside a designated building envelope.
    - Subdivision of the parcel that is consistent with agricultural viability purposes of the easement.
    - Limited oil and gas extraction that does not undermine the parcels ability to meet program purposes.
  - Standard US Right of Enforcement Language – a right of enforcement for the United States is required by the ACEP statute. The Standard US right of enforcement language has been carefully crafted to identify that the eligible entity as the holder of the ACEP-ALE easement carries primary responsibility for monitoring and enforcement and that the US right of enforcement will be exercised when the holder of the ACEP-ALE easement does not fulfill their responsibilities.
- Cooperative Agreement - The Cooperative Agreement templates have been updated to incorporate additional flexibility and standardized for use by all eligible entities interested in participating in ACEP-ALE.
  - The required use of the standard Cooperative Agreement significantly expedites the enrollment process and increases the equity and transparency in the administration of ACEP.

- Recognizes State sovereignty by removing the requirement for the entities to indemnify the United States. This improvement will facilitate participation by state entities.
  - Increases flexibility to allow substitution of parcels on the agreement at any time provided the parcel is eligible, ranks high enough to be funded, and sufficient funds are available within the agreement at the time of substitution.
  - Funds will not be added to the agreement for substitutions, State Conservationists have discretion to determine how much funding up to the statutory cost-share limit will be provided for each parcel. State Conservationist must manage funds within the agreement accordingly.
- Access - NRCS has introduced additional flexibility in determining what constitutes legal access allowing State Conservationists to determine sufficiency of alternative legal access to parcels that are only accessible across adjacent federal lands. NRCS is seeking comment through the ACEP interim final regulation on the specific conditions that constitute sufficient legal access for ACEP-ALE.
- Clarifies the requirements for a written pending offer and evidence of sufficient cash match is a condition of eligibility and must be provided at the time of application to allow NRCS to complete eligibility determinations and minimize subsequent deobligation of funds.
- Easement Valuation
    - Increased options in the methodologies used to determine fair market value of the agricultural land easement are available under ACEP. The methodologies include USPAP or UASFLA appraisals, area-wide market analysis, or other industry approved method approved by the Chief.
    - Approval to use area-wide market analysis or other industry approved method is needed prior to entering into a cooperative agreement.
    - Expanded appraisal effective date allowances to reduce incidences of updated appraisals being required.
    - The effective date of the appraisal must be within 6 months prior to or after the date the parcel is identified for funding on the cooperative agreement or within 12 months of the easement closing date.
- Incorporate grassland and grazing use considerations into the ACEP-ALE eligibility and ranking factors.
- Grassland of Special Environmental Significance (GSS) - NRCS may provide up to 75 percent of the fair market value of the agricultural land easement for GSS enrollments.
    - NRCS includes a definition of grassland of special environmental significance in the regulation, which emphasizes grasslands that are in good condition, are subject to the threat of conversion, and provide benefits for at-risk species, protect declining native grasslands, or protect highly sensitive natural resources.
    - NRCS is seeking input through the ACEP interim final rule on the definition of grassland of special environmental significance definition.

- Projects of Special Significance – NRCS developed criteria and waiver process for adjustments to the eligible entity cash contribution requirement for projects of special significance.
  - Waivers reviewed and granted at the State level by the State Conservationist
  - Entity cash contribution requirement may be waived:
    - For regular ALE enrollments to 25 percent or 10 percent of the Federal share rather than the standard 50 percent.
    - For Grassland of Special Environmental Significance ALE enrollments to 8.33 percent or 3.33 percent of the Federal Share rather than the standard 25 percent.
  - NRCS is seeking input on the criteria for what constitutes a project of special significance during the regulation comment period.
  
- ALE Plans - All ALE enrollments must be subject to an Agricultural Land Easement Plan. NRCS has identified the conditions under which the various components plans are required and how those components are incorporated into the ALE plan.
  - At the entity’s option, ALE Plans may be created by the entity or by NRCS to allow maximum flexibility in developing the plan.
  - The ALE plan must also include component plans for certain types of land:
    - Grassland enrollments must have a Grassland Management Plan.
    - Highly Erodible Land must have a Conservation Plan.
    - Forest land over 40 acres or more than 20 percent of the enrollment area must have a Forest Management Plan.
  
- Forest Land - Nonindustrial private forest land that contributes to the economic viability of the parcel or buffers the parcel from development is eligible but is limited to not more than two-thirds of the offered area consistent with the requirements under FRPP.
  - Forest land eligibility has been expanded to include a waiver to the two-thirds limitation for sugar bush acreage that contributes to the economic viability of the parcel.

**Major Changes Between ACEP-WRE and WRP**

- The WRE component of ACEP replaces the Wetlands Reserve Program. The ACEP-WRE regulation is very similar to the previous WRP regulation with the exception of the few statutory changes and associated procedural changes or clarifications.
- Clarified that transfers of ownership prior to closing are acceptable provided the new landowner meets all eligibility requirements, including length of ownership waiver requirements.
- Reduced the length of ownership requirement from 7 years to 24 months, clarified circumstances for a waiver and through policy delegated additional authority to State Conservationists to make determinations on landowner requests for a waiver of the length of ownership requirement.
- Clarified land eligibility requirements related to the ‘cropland or grassland used for agricultural production prior to flooding from the natural overflow of a closed basin lake’

eligibility category. Introduced the new statutory requirement that 50 percent of the easement cost be provided by a State or other entity though the easement would still be held by the United States.

- Includes criteria to determine when the new flexibility to enroll lands established to trees under the CRP may be exercised. Delegated the decision making authority on this provision to the State Conservationist through policy.
- Provided procedural guidance for coordination between the Farm Service Agency (FSA) and NRCS with regard to tracking and calculating the county cropland limitations and ensuring FSA is excluding exempted “subclass w” soils from their county cropland calculations.