



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Civil Rights

1400 Independence
Avenue SW

Washington, DC
20250

TO: Bill Northey
Under Secretary
Farm Production and Conservation

FROM: Devon Westhill
Deputy Assistant Secretary
Office of the Assistant Secretary for Civil Rights

SUBJECT: Final Rule: Agricultural Conservation Easement Program

Thank you for the opportunity to review the final rule, Agricultural Conservation Easement Program (ACEP), submitted by the Natural Resources Conservation Service (NRCS). As required by Departmental Regulation (DR) 4300-004, Civil Rights Impact Analysis (CRIA), the Office of the Assistant Secretary for Civil Rights (OASCR) has completed its review.

Background

NRCS is proposing the final rule to adopt an interim rule which implemented changes to ACEP necessitated by the enactment of the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) or were required to implement administrative streamlining improvements and clarifications. Specifically, the final rule will:

- introduce new authority for the Secretary to enter a legal arrangement with an eligible entity that is pursuing a “Buy-Protect-Sell” transaction;
- modify the non-Federal share contribution requirements provided by the eligible entity under ACEP-Agricultural Land Easement (ACEP-ALE);
- introduce new considerations for certification of eligible entities, including whether the entity is an accredited Land Trust or a State Department of Agriculture;
- remove the requirement for NRCS to seek input from the Secretary of Interior at the local level for the determination of eligible land;
- remove the requirement for the development of an agricultural land easement plan and for the easement to be subject to the agricultural land easement plan;
- specify in statute the existing authority for the Secretary to adjust ranking and evaluation criteria for geographic differences and to give priority to application that maintain agricultural viability;

- add improved water quality to the priority considerations for acquiring Wetland Reserve Easements (WRE);
- add additional criteria and parameters for the authorization of compatible economic uses on wetland reserve easements; and
- specify in statute the existing authority to ensure a WRE with a reservation of grazing rights complies with a grazing management plan that is reviewed and modified as needed every five years.

Civil Rights Review of the Final Rule

The civil rights review of the final rule was conducted in accordance with the requirements of DR 1512-1, Regulatory Decision-Making Requirements, DR 4300-004, and 7 CFR Part 15, Subpart A, Nondiscrimination in Programs or Activities Conducted by the United States Department of Agriculture. The review focused on any potential civil rights issues that may impact members of protected groups as a result of implementing the final rule.

NRCS submitted a CRIA for our review, dated July 23, 2020. The CRIA states “the review reveals no factors indicating the ACEP Final Rule would have a disproportionate adverse civil rights impact on NRCS producers who are minorities, women, or persons with disabilities.” NRCS did not conduct nor provide an adverse or disproportionate impact analysis to support its conclusion in accordance with the requirements of DR 4300-004 or the analysis instructions contained in the CRIA Guidebook.

NRCS provided the following race, ethnicity, and gender (REG) data of participants who voluntarily identify themselves as participants in the ACEP-ALE and ACEP-WRE programs:

All REG	ACEP-ALE Participants							
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017		Fiscal Year 2018	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres	Agreements	Acres
AI/AL	0	0	0	0	0	0	0	0
Asian	0	0	0	0	0	0	0	0
Black	0	0	1	52	2	170	0	0
Unknown	16	9,735	21	15,208	26	43,212	166	16,667
White	112	55,462	183	114,755	185	163,253	160	13,028
Hispanic	0	0	2	7,594	0	0	3	237
No Data	0	0	0	0	0	0	0	0
Total	128	65,197	205	130,015	213	206,635	326	29,695

NRCS reports that participation data for the ACEP-ALE program is very low for minorities. For FY 2018 the REG data indicates there were no Asian, American Indian/Alaskan Native, nor Black participants in the ACEP-ALE program. The CRIA also indicates in FY 2018, there were a total of 326 participants of which 49.1 percent

were White, .009 percent were Hispanic, and 17 percent were unknown.

All REG	ACEP-WRE Participants							
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017		Fiscal Year 2018	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres	Agreements	Acres
AI/AL	0	0	0	0	1	33	1	222
Asian	0	0	0	0	1	634	0	0
Black	1	20	0	0	0	0	2	208.5
Unknown	17	6,886	18	3,191	21	11,935	128	3,288.5
White	179	37,104	253	34,410	423	79,709	184	6,688.7
Hispanic	2	404	2	284	2	1,111	0	0
No Data	1	88	2	281	0	0	0	0
Total	198	44,098	273	37,883	446	92,310	315	10,407.7

NRCS reports the data for the ACEP–WRE program for minority participation for FY 2018 was also very low. The CRIA indicates there were a total of 315 participants for FY 2018, of which 58.4 percent were White; 0.6 percent were Black; 0.3 percent were American Indian/Alaska Native; 0 percent were Hispanic, and 40.6 percent were unknown.

Gender	ACEP - ALE							
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017		Fiscal Year 2018	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres	Agreements	Acres
Female	17	3,646	16	2,398	25	6,560	16	219.9
Male	63	16,505	110	32,339	114	70,389	103	9,104.6

NRCS reports that participation data for the ACEP-ALE program for FY 2018 show 16 were female and 103 were male.

Gender	ACEP - WRE							
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017		Fiscal Year 2018	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres	Agreements	Acres
Female	20	2,795	37	3,297	40	6,732	22	280.9
Male	112	13,009	160	20,287	268	38,427	113	2,116.8

NRCS reports that participation data for ACEP–WRE program for FY 2018 show 22 females and 113 were male.

Outreach

NRCS proposes the following outreach efforts:

- increase by 30 percent the number of strategic outreach partnership agreements to assist with promoting NRCS’ easement programs to historically underserved landowners;
- increase by 10 percent the number of eligible program applications received from historically underserved landowners using FY 2018 application data as the baseline;

- ensure all NRCS 2018 Farm Bill programs and services are made accessible to all customers, fairly and equitably, with emphasis on reaching underserved and socially disadvantaged farmers or ranchers and landowners, including veterans, Tribes and Tribal members;
- educate NRCS employees regarding the unique nature of working with historically underserved and Tribal audiences; and
- educate and inform existing NRCS customers and potential new NRCS customers on its conservation programs available through the 2018 Farm Bill using plain, understandable language.

Mitigation

NRCS is recommending the following mitigating strategies to incorporate the changes implemented by the 2018 Farm Bill:

- collaborate at the National and local levels with Community-Based Organizations;
- partner with Tribal entities to conduct face-to-face educational meetings and workshops with Tribes and their members to further explain the 2018 Farm Bill programs; and
- help producers and landowners understand the changes in the 2018 Farm Bill and address barriers that may impede a landowner's or Tribe's participation.

Conclusion

This review is predicated on the accuracy and completeness of the information in NRCS' docket and CRIA. Based on such assurances, OASCR contingently concurs with the final rule based on NRCS providing the following information no later than December 1, 2020:

- a current CRIA certified by the FPAC Civil Rights Director; and
- the results of an adverse or disproportionate impact analysis conducted based on its REG participation data and the instructions contained in the CRIA Guidebook.

Due to the low participation of minorities in both the ACEP-ALE and ACEP-WRE programs, we further advise NRCS to conduct a barrier analysis to determine what barriers are preventing minorities and women from participating in both programs. The results of the barrier analysis should be provided to OASCR within six months of implementation of the rule.

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OASCR retains the right to conduct a compliance review or otherwise request NRCS show evidence of its outreach and mitigation strategies at any time and is available to discuss our review and respond to any questions. If additional information is needed, please contact Denise Banks, Executive Director, Center for Civil Rights Operations at denise.banks@usda.gov.

cc: Mission Area Civil Rights Director, FPAC