

Agricultural Conservation Easement Program: U.S. Department of Agriculture Publishes Interim Rule



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The U.S. Department of Agriculture's ("USDA") recent efforts to update the Farm Bill's Title II conservation programs continued into the 2020 year.

USDA has issued since early December a number of interim final rules to update the nation's conservation programs which include:

- the Conservation Reserve Program (see 84 Federal Register 66813 (Friday, December 6, 2019)); and
- the Environmental Quality Incentives Program (see 84 Federal Register 69272 (Tuesday, December 17, 2019)).

On January 6, 2020, USDA's Commodity Credit Corporation ("CCC") and Natural Resources Conservation Service ("NRCS") continued the effort and published in the Federal Register an interim rule to implement conforming changes to the Agricultural Conservation Easement Program that were required by the Agricultural Improvement Act of 2018, Pub. L. 115-334 (i.e., the 2018 Farm Bill). See 85 Federal Register 558 (Monday, January 6, 2020).

The interim final rule was effective on December 30, 2019, though the CCC and NRCS will consider written comments submitted on or before March 6, 2020. Comments on the agency's draft Environmental Analysis (EA) and Finding of No Significant Impact (FONSI) must be submitted on or before February 5, 2020.

The Agricultural Conservation Easement Program (or "ACEP") "is a voluntary program to help farmers and ranchers preserve their agricultural land and restore, protect, and enhance wetlands on eligible lands." Id. ACEP offers two easement enrollment options:

- Agricultural Land Easements (ALE): Offers matching funds to State, Tribal, and local governments, and nongovernmental organizations with farm and ranch land protection programs to purchase agricultural land easements. Agricultural land easements are permanent or for the maximum duration authorized by State law.
- Wetland Reserve Program (WRE): Authorizes NRCS to protect wetlands by purchasing an easement directly from an eligible landowner; thereby, providing for the restoration, enhancement, and protection of wetlands and associated uplands. WRP easements may be permanent, 30-years, or the maximum duration authorized by State law.

ACEP was first specifically authorized by the Agricultural Act of 2014, and NRCS administers the program pursuant to regulations at 7 CFR part 1468. The 2018 Farm Bill amended the ACEP authorizing statute and requires several conforming changes to the implementing regulations, including but not limited to:

ACEP

- Incorporates a waiver of the “adjusted gross income” limitations applicable to Farm Bill conservation program payments; and
- Modified the criteria under which NRCS may subordinate, modify, exchange, or terminate all or part of an easement.

ACEP-ALE

- Adjusted the non-Federal contribution requirements;
- Removed the requirement for the development of a specific ACEP-ALE conservation plan (though the requirement remains for highly erodible cropland) and authorizes, instead, States to prioritize ACEP-ALE applications from organizations committed to ensuring ongoing conservation planning;
- Created new “buy-protect-sell” transactions for private and Tribal lands; and,
- Adopted new criteria to evaluate and authorize subsurface mineral development on land subject to agricultural easements.

ACEP-WRE

- Added water management to the list of compatible uses within an easement area and incorporated appropriate criteria and conditions to authorize the compatible use;
- Added a new requirement that any reservation and use of grazing rights must comply with a grazing management plan that is consistent with the wetland reserve easement, and that such plan be reviewed and modified, if necessary, every five years; and
- Revised the definition of “wetland restoration” and included new requirements that the restoration be conducted following State-specific criteria and guidelines, and removed limitations on the percentages of required vegetation communities.

A copy of the interim final rule can be found [HERE](#).