

CIVIL RIGHTS IMPACT ANALYSIS
INTERIM RULE:
AGRICULTURAL CONSERVATION EASEMENT PROGRAM
NATURAL RESOURCES CONSERVATION SERVICE
US DEPARTMENT OF AGRICULTURE

This review evaluates the Agricultural Conservation Easement Program (ACEP) Interim Rule for actual or potential civil rights issues. The review analyzes the Interim Rule to ensure compliance with Departmental Regulation (DR) 4300-4, "Civil Rights Impact Analysis"; 7 C.F.R. part 15, "Nondiscrimination in Programs and Activities Conducted by the United States Department of Agriculture"; and DR 1512, "Regulatory Decision-Making Requirement." The review reveals no factors indicating that the ACEP Interim Rule would have a disproportionate adverse civil rights impact on NRCS producers who are minorities, women, or persons with disabilities.

BACKGROUND

ACEP is a voluntary nationwide program implemented under the general supervision and direction of the Chief of NRCS, under the borrowing authority of the Commodity Credit Corporation (CCC). ACEP is available in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands. Through ACEP, NRCS provides financial and technical assistance to eligible entities or to eligible landowners to restore and protect eligible land. ACEP was created by the Agricultural Act of 2014 (2014 Farm Bill) by consolidating the Farm and Ranch Lands Protection Program (FRPP), the Grassland Reserve Program (GRP), and the Wetlands Reserve Program (WRP) into a single easement program. ACEP was re-authorized and continued under the 2018 Farm Bill with some minor amendments. ACEP restores, protects, and enhances wetlands on eligible land; protects the agricultural use, viability, and related conservation values of eligible land by limiting non-agricultural land uses that negatively affect agricultural uses and conservation values; and protects grazing uses and related conservation values by restoring or conserving eligible land. ACEP is composed of two components:

The Agricultural Conservation Easement Program—Wetland Reserve Easements (ACEP-WRE) component provides technical and financial assistance directly to landowners to restore and protect agricultural wetlands and associated habitats through conservation easements. ACEP-WRE addresses wetlands, wildlife habitat, soil, water, and related natural resource concerns on private and Tribal lands. The program provides eligible landowners with permanent (or maximum duration allowed by State law) and 30-year easement options as well as a 30-year contract option for acreage owned by Indian tribes. ACEP-WRE easements are solely purchased and held by the United States. NRCS considers the conservation benefits of restoring wetlands and associated habitats on marginal crop land removed from agricultural production, the cost effectiveness of the easement relative to the environmental benefits, and financial contributions by the landowner or other third party.

The Agricultural Conservation Easement Program—Agricultural Land Easements (ACEP-ALE) component protects the natural resources and agricultural value of the land, promotes agricultural

viability for future generations, preserves open space, provides scenic amenities, and protects grazing uses and related conservation values by restoring or conserving eligible land and limiting non-agricultural uses. ACEP-ALE easements are acquired using an ALE agreement with an eligible entity where NRCS provides cost-share assistance to the eligible entity for the entity's purchase of a conservation easement. The only enrollment option is a permanent (or the maximum length allowed by State law) easement. The 2018 Farm Bill defines an ALE as an easement or other interest in eligible land that is conveyed for the purposes of protecting natural resources and the agricultural nature of the land, and of promoting agricultural viability for future generations, and permits the landowner the right to continue agricultural production and related uses.

LEGISLATIVE CHANGES

The Agriculture Improvement Act of 2018 amended Subtitle H of Title XII of the Food Security Act of 1985 by making the following changes to ACEP program requirements:

Changes Applicable to ACEP-ALE:

- Narrows the scope of the non-agricultural uses that may be limited on an agricultural land easement to those that negatively affect the agricultural uses or conservation values.
- Removes the requirement for the development of an agricultural land easement plan and for the easement to be subject to the agricultural land easement plan. The scope of planning under ACEP-ALE is now limited to a conservation plan required for any portion of the easement area that is highly erodible cropland (HEL).
- Introduces new authority for the Secretary to enter into a legal arrangement with an eligible entity that is pursuing a “Buy-Protect-Sell” transaction.
- Removes the requirement for NRCS to seek input from the Secretary of the Interior at the local level for the determination of eligible land.
- Introduces the term “monitoring report.”
- Modifies the non-Federal share contribution requirements provided by the eligible entity under ACEP-ALE.
- Specifies in statute the existing authority for the Secretary to adjust ranking and evaluation criteria for geographic differences and to give priority to applications that maintain agricultural viability.
- Limits the United States Right of Enforcement to exclude the right of inspection except under certain circumstances.
- Introduces additional terms and conditions that may be included in the agricultural land easement deed.
- Introduces new considerations for certification of eligible entities, including whether the entity is an accredited Land Trust or a State Department of Agriculture.

Changes Applicable to ACEP-WRE:

- Adds improving water quality to the priority considerations for acquiring wetland reserve easements.
- Adds additional criteria and parameters for the authorization of compatible economic uses on wetland reserve easements.
- Specifies in statute the existing authority to ensure that a WRE with a reservation of grazing rights complies with a grazing management plan that is reviewed and modified as needed every five years.

- Adds further specificity to the considerations in the development of a wetlands reserve easement plan.
- Allows NRCS to authorize the restoration of the easement area to hydrologically appropriate native vegetative communities or alternative naturalized vegetative communities, subject to certain requirements.

Changes Applicable to All Components of ACEP:

- Makes changes to the Secretary's authorities for modification, subordination, exchange, or termination of ACEP easements.

CIVIL RIGHTS IMPACT ANALYSIS

The Civil Rights Impact Analysis (CRIA) is directed towards the identification of actual or potential civil rights issues. The purpose is to identify any disparate impact the ACEP Interim Rule will have on affected groups and rationally and reasonably dispose of each. Disparate impact occurs when a recipient uses a policy or practice that, while neutral on its face and applicable to everyone, disproportionately and adversely affects members of a protected group and the recipient can articulate no substantial legitimate justification. The theory of disparate impact does not require proof of discriminatory intent, but centers around the adverse effect(s) that a policy or practice has on protected groups.

The analysis evaluated the extent to which the various populations are affected by the rule, and how the impact is manifested. The CRIA includes: (A) general provision; (B) administration and development; (C) historical participation data; (D) eligibility criteria; (E) outreach strategy; (F) barrier removal provisions; (G) conclusion; and (H) NRCS Civil Rights Director's certification. The examination sought to determine if all the affected groups:

- are provided the same opportunities to participate in the decision-making or rulemaking process for ACEP,
- have historically been provided the same opportunities to participate in NRCS programs, and
- are provided the same information to decide if they wish to participate in the ACEP.

A. General Provisions

ACEP is a voluntary program to help farmers and ranchers preserve their agricultural land or to restore and protect wetlands and associated habitats on private and tribal lands through the purchase of agricultural land easements or wetland reserve easements (which includes a 30-year contract enrollment option limited to acreage owned by Indian Tribes). Under the agricultural land easement enrollment option, NRCS provides matching funds to eligible entities that are State, Tribal, and local governments, and nongovernmental organizations with farmland protection programs to assist them with purchasing agricultural land easements. Under the wetland reserve easement enrollment option, NRCS purchases a reserved interest easement directly from owners of eligible land which provides for the restoration, enhancement, and protection of agricultural wetlands and associated habitats.

Congress continues to recognize the importance of protecting these lands by authorizing funding to preserve and protect farms and ranches, prevent soil erosion and restore critical wetland functions and values. ACEP's financial and technical assistance helps landowners comply with environmental

regulations and enhance agricultural lands and wetlands in a cost-effective and environmentally beneficial manner.

B. Administration and Development

The Secretary of Agriculture has delegated authority to the Chief of NRCS to implement ACEP. The NRCS Chief may implement ACEP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

- Program Delivery: ACEP, through its agricultural land enrollment component works with eligible entities to purchase conservation easements on agricultural land and, through its wetland reserve enrollment component, works directly with landowners to obtain conservation easements on eligible wetlands.
- Signup Period and Contract Determinations: ACEP applications are made available on USDA and NRCS websites, by partners, and through direct outreach. To participate in the agricultural land easement component of ACEP, an eligible entity must apply to the State Conservationist in the State where the parcels are located. To participate in the wetland reserve easement component of ACEP, an eligible landowner must apply for participation in ACEP at a local USDA service center. Applications are accepted on a continuous basis throughout the year.

C. Historical Participation Data¹

NRCS is a science-based agency. As such, the agency collects, develops, analyzes and maintains large amounts of data. The Agency relies on a number of key databases. Though each one has its own purpose and function, some of the databases have overlapping functions.

The Data Services Branch -Economic and Policy Analysis Division, works primarily with two key operational program databases: the National Easements Staging Tool (NEST) and the Financial Management Modernization Initiative (FMMI). In addition to these datasets, the team also works with Agency data stewards regarding the National Conservation Planning (NCP) database.

NEST is the Agency's primary software application for managing several easement programs. The application is used to help track the easement acquisition and stewardship process. NEST contains race, ethnicity and gender (REG) data for ACEP. FMMI contains payment and obligation information.

The following charts, based on NEST data, include the calculation of the percentage of principal operators based on the reported 2012 Census data for each of the groups. This data is used because the predecessor programs' enrollment occurred through the end of FY 2013 and used the 2012 Census data.

¹ A comparison of this document with the Regulatory Impact Analysis (RIA) may show small differences in reported data. CRIA data include both enrolled and closed easements, while the Regulatory Impact Analysis includes only closed easements. In addition, the data for the RIA and the CRIA were pulled from the NRCS system on different dates.

RACE

The collection of race data is dependent on whether the participant voluntarily identifies themselves. In addition, some participants may identify with more than one racial group.

All Race, Ethnicity, and Gender (REG)	ACEP—Agricultural Land Easements (ALE)					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
American Indian/Alaska	0	0	0	0	0	0
Asian	0	0	0	0	0	0
Black	0	0	1	52	2	170
Unknown	16	9,735	21	15,208	26	43,212
White	112	55,462	183	114,755	185	163,253
No Data	0	0	0	0	0	0
Grand Total	128	65,197	205	130,015	213	206,635
All REG Percent	ACEP-ALE					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
American Indian/Alaska	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Asian	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Black	0.0%	0.0%	0.5%	0.0%	0.9%	0.1%
Unknown	12.5%	14.9%	10.2%	11.7%	12.2%	20.9%
White	87.5%	85.1%	89.3%	88.3%	86.9%	79.0%
No Data	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Program participation data for ACEP (ALE) indicates very low minority participation. Based on self-reported information during the three-year period between fiscal years FY 2015 and FY 2017, there were no Asian or American Indian participants. There were three African American participants, and 480 White participants. Individuals that have chosen not to identify themselves by race, ethnicity or gender are indicated as “Unknown” in the participation data.

All Race, Ethnicity, and Gender (REG)	ACEP—Wetland Reserve Easements (WRE)					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
American Indian/Alaska Native	0	0	0	0	1	33
Asian	0	0	0	0	1	634
Black	1	20	0	0	0	0
Unknown	17	6,886	18	3,191	21	11,935
White	179	37,104	253	34,410	423	79,709
No Data	1	88	2	281	0	0
Grand Total	198	44,098	273	37,883	446	92,310
All REG Percent	ACEP-WRE					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
American Indian/Alaska Native	0.0%	0.0%	0.0%	0.0%	0.2%	0.0%
Asian	0.0%	0.0%	0.0%	0.0%	0.2%	0.7%
Black	0.5%	0.0%	0.0%	0.0%	0.0%	0.0%
Unknown	8.6%	15.6%	6.6%	8.4%	4.7%	12.9%
White	90.4%	84.1%	92.7%	90.8%	94.8%	86.3%
No Data	0.5%	0.2%	0.7%	0.7%	0.0%	0.0%

Program participation for ACEP-WRE also indicates low minority participation. However, there was more minority participation in WRE than in ALE. The data indicate that there was one participant for each identified group (Asian, African American, and American Indian). Based on the low numbers, no inferences can be made.

ETHNICITY

Ethnicity	ACEP-ALE					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
Hispanic	0	0	2	7,594	0	0
Non-Hispanic	97	42,133	156	68,122	165	108,675
Unknown	31	23,065	47	54,299	48	97,960
No Data	0	0	0	0	0	0
Grand Total	128	65,197	205	130,015	213	206,635
Ethnicity Percent	ACEP-ALE					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
Hispanic	0.0%	0.0%	1.0%	5.8%	0.0%	0.0%
Non-Hispanic	75.8%	64.6%	76.1%	52.4%	77.5%	52.6%
Unknown	24.2%	35.4%	22.9%	41.8%	22.5%	47.4%
No Data	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Ethnicity	ACEP-WRE					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
Hispanic	2	404	2	284	2	1,111
Non-Hispanic	164	31,767	236	31,483	385	68,499
Unknown	31	11,839	33	5,833	59	22,700
No Data	1	88	2	281	0	0
Grand Total	198	44,098	273	37,883	446	92,310
Ethnicity Percent	ACEP-WRE					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
Hispanic	1.0%	0.9%	0.7%	0.8%	0.4%	1.2%
Non-Hispanic	82.8%	72.0%	86.4%	83.1%	86.3%	74.2%
Unknown	15.7%	26.8%	12.1%	15.4%	13.2%	24.6%
No Data	0.5%	0.2%	0.7%	0.7%	0.0%	0.0%

Ethnicity data indicates there were two Hispanic participants in ACEP-ALE and six participants for ACEP-WRE for the program years spanning 2015 through 2017.

GENDER

Gender	ACEP-ALE					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
Female	17	3,646	16	2,398	25	6,560
Male	63	16,505	110	32,339	114	70,389
Org Other	20	19,815	27	57,729	31	66,629
Org/Fem-Owned	2	75	5	1,114	5	1,228
Org/Male-Owned	8	9,290	19	11,376	12	22,071
Unknown	18	15,866	28	25,059	26	39,757
No Data	0	0	0	0	0	0
Subtotal Female	19	3,721	21	3,512	30	7,788
Subtotal Male	71	25,795	129	43,715	126	92,461
Grand Total	128	65,197	205	130,015	213	206,635
Gender Percent	ACEP-ALE					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
Org Other	15.6%	30.4%	13.2%	44.4%	14.6%	32.2%
Unknown	14.1%	24.3%	13.7%	19.3%	12.2%	19.2%
No Data	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Subtotal Female	14.8%	5.7%	10.2%	2.7%	14.1%	3.8%
Subtotal Male	55.5%	39.6%	62.9%	33.6%	59.2%	44.7%

GENDER (continued)

Gender	ACEP-WRE					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
Female	20	2,795	37	3,297	40	6,732
Male	112	13,009	160	20,287	268	38,427
Org Other	19	7,799	25	4,898	70	21,809
Org/Fem-Owned	3	526	5	562	5	1,630
Org/Male-Owned	16	7,650	14	3,521	30	9,544
Unknown	27	12,231	30	5,036	33	14,168
No Data	1	88	2	281	0	0
Subtotal Female	23	3,321	42	3,859	45	8,363
Subtotal Male	128	20,659	174	23,808	298	47,971
Grand Total	198	44,098	273	37,883	446	92,310
Gender Percent	ACEP-WRE					
	Fiscal Year 2015		Fiscal Year 2016		Fiscal Year 2017	
Category	Agreements	Acres	Agreements	Acres	Agreements	Acres
Org Other	9.6%	17.7%	9.2%	12.9%	15.7%	23.6%
Unknown	13.6%	27.7%	11.0%	13.3%	7.4%	15.3%
No Data	0.5%	0.2%	0.7%	0.7%	0.0%	0.0%
Subtotal Female	11.6%	7.5%	15.4%	10.2%	10.1%	9.1%
Subtotal Male	64.6%	46.8%	63.7%	62.8%	66.8%	52.0%

Gender data for ACEP indicates that male and male-owned organizations dominate participation in ACEP. Participation by female and female-owned organizations is increasing each year. ACEP-ALE increased from 19 female/female org. participants in FY2015 to 30 female and/female org participants in FY2017. Female/female org participants in ACEP-WRE increased from 23 in FY2015 to 45 in FY2017.

**ACEP FA Obligations (1,000s)
by State and Component (ALE
or WRE) Source: FMMI Status
of Funds for FY2015, FY2016
and FY2017**

Fiscal Year 2015			Fiscal Year 2016			Fiscal Year 2017		
	ACEP-ALE	ACEP-WRE		ACEP-ALE	ACEP-WRE		ACEP-ALE	ACEP-WRE
State	FA Obligations	FA Obligations	State	FA Obligations	FA Obligations	State	FA Obligations	FA Obligations
Alabama	\$0	\$559	Alabama	\$0	\$145	Alabama	\$0	\$2,890
Alaska	\$0	\$0	Alaska	\$802	\$0	Alaska	\$579	\$0
Arizona	\$0	\$0	Arizona	\$903	\$0	Arizona	\$7,743	\$0
Arkansas	\$0	\$19,533	Arkansas	\$0	\$15,041	Arkansas	\$0	\$40,998
California	\$5,528	\$10,041	California	\$9,578	\$8,520	California	\$8,451	\$10,980
Colorado	\$3,273	\$28	Colorado	\$12,948	\$0	Colorado	\$7,665	\$6
Connecticut	\$2,752	\$0	Connecticut	\$4,363	\$0	Connecticut	\$4,089	\$0
Delaware	\$2,204	\$1,753	Delaware	\$0	\$189	Delaware	\$1,232	\$496
Florida	\$5,688	\$19,636	Florida	\$3,822	\$3,086	Florida	\$9,081	\$36,936
Georgia	\$0	\$6,042	Georgia	\$1,127	\$309	Georgia	\$565	\$14,378
Hawaii / Pacific	\$0	\$0	Hawaii / Pacific	\$0	\$0	Hawaii/Pacific	\$0	\$0
Idaho	\$666	\$2	Idaho	\$912	\$179	Idaho	\$1,580	\$480
Illinois	\$302	\$2,022	Illinois	\$411	\$2,455	Illinois	\$2	\$13,986
Indiana	\$0	\$3,084	Indiana	\$0	\$6,741	Indiana	\$0	\$11,878
Iowa	\$714	\$10,314	Iowa	\$448	\$12,693	Iowa	\$415	\$15,074
Kansas	\$661	\$1,258	Kansas	\$126	\$1,829	Kansas	\$0	\$5,691
Kentucky	\$2,119	\$6,655	Kentucky	\$1,835	\$10,257	Kentucky	\$17	\$14,996
Louisiana	\$3	\$13,576	Louisiana	\$0	\$14,738	Louisiana	\$0	\$19,746
Maine	\$350	\$0	Maine	\$251	\$0	Maine	\$378	\$0
Maryland	\$0	\$2,366	Maryland	\$0	\$1,863	Maryland	\$0	\$1,301
Massachusetts	\$1,669	\$649	Massachusetts	\$3,539	\$470	Massachusetts	\$2,551	\$1,656
Michigan	\$1,305	\$1,012	Michigan	\$1,750	\$1,256	Michigan	\$2,111	\$464
Minnesota	\$7	\$818	Minnesota	\$0	\$1,400	Minnesota	\$0	\$494
Mississippi	\$84	\$1,590	Mississippi	\$528	\$4,769	Mississippi	\$1,632	\$16,860

Missouri	\$0	\$4,441	Missouri	\$0	\$9,115	Missouri	\$0	\$18,646
Montana	\$4,140	\$48	Montana	\$13,987	\$1,983	Montana	\$21,151	\$7,234
Nebraska	\$4	\$2,498	Nebraska	\$510	\$243	Nebraska	\$356	\$4,292
Nevada	\$2,333	\$422	Nevada	\$0	\$37	Nevada	\$0	\$87
New Hampshire	\$1,370	\$2,211	New Hampshire	\$2,492	\$5,373	New Hampshire	\$1,332	\$5,496
New Jersey	\$4,462	\$213	New Jersey	\$3,394	\$1,467	New Jersey	\$1,519	\$124
New Mexico	\$2	\$0	New Mexico	\$682	\$0	New Mexico	\$1,085	\$0
New York	\$1,514	\$1,491	New York	\$1,226	\$2,030	New York	\$1,785	\$786
North Carolina	\$512	\$73	North Carolina	\$1,237	\$2,955	North Carolina	\$1,826	\$3,073
North Dakota	\$0	\$3,798	North Dakota	\$0	\$3,759	North Dakota	\$0	\$4,749
Ohio	\$2,755	\$2,827	Ohio	\$3,173	\$3,439	Ohio	\$5,139	\$4,849
Oklahoma	\$1	\$797	Oklahoma	\$406	\$1,430	Oklahoma	\$0	\$2,879
Oregon	\$2,396	\$74	Oregon	\$375	\$18	Oregon	\$539	\$931
Pennsylvania	\$680	\$2,272	Pennsylvania	\$1,320	\$1,084	Pennsylvania	\$1,613	\$1,321
Puerto Rico / Caribbean	\$0	\$0	Puerto Rico / Caribbean	\$0	\$0	Caribbean	\$0	\$0
Rhode Island	\$279	\$8	Rhode Island	\$1,108	\$193	Rhode Island	\$613	\$181
South Carolina	\$520	\$954	South Carolina	\$1,070	\$1,168	South Carolina	\$1	\$1,431
South Dakota	\$0	\$5,883	South Dakota	\$0	\$8,385	South Dakota	\$0	\$6,019
Tennessee	\$251	\$2,233	Tennessee	\$1	\$3,842	Tennessee	\$1	\$10,029
Texas	\$4,907	\$636	Texas	\$6,392	\$169	Texas	\$6,175	\$3,275
Utah	\$2,792	\$305	Utah	\$1,260	\$8	Utah	\$10,563	\$17
Vermont	\$122	\$436	Vermont	\$4,775	\$531	Vermont	\$2,794	\$1,689
Virginia	\$915	\$863	Virginia	\$1,705	\$438	Virginia	\$329	\$15
Washington	\$8	\$13	Washington	\$623	\$11	Washington	\$9,385	\$36
West Virginia	\$19	\$30	West Virginia	\$3,143	\$0	West Virginia	\$1,031	\$0
Wisconsin	\$371	\$1,850	Wisconsin	\$340	\$3,254	Wisconsin	\$464	\$5,021
Wyoming	\$719	\$0	Wyoming	\$2,798	\$0	Wyoming	\$3,170	\$0
Other	\$0	\$1,000	Other	\$0	\$0	Other	\$70	-\$134
Grand Total	\$58,393	\$136,313	Grand Total	\$95,361	\$136,874	Grand Total	\$119,032	\$291,357

The FMMI data indicates program fund and component obligations (and Payments) by State. The ACEP ALE financial assistance obligation grand totals are as follows:

	Fiscal Year 2015	Fiscal Year 2016	Fiscal Year 2017
Agreements	128	205	213
Acres	65,197	130,015	206,635
Total Obligation	58,393	95,361	119,032

The ACEP WRE component obligation grand totals are as follows:

	Fiscal Year 2015	Fiscal Year 2016	Fiscal Year 2017
Agreements	198	273	446
Acres	44,098	37,883	92,310
Total Obligation	136,313	136,874	291,357

In 2015, the top three states with the most ACEP FA Obligations (\$1,000s) by State and Component (ALE) were Florida (\$5,688), California (\$5,528), and Texas (\$4,907). The top three by WRE component were Florida (\$19,636), Arkansas (\$19,533), and Louisiana (\$13,576).

In 2016, the top three states with the most ACEP FA Obligations (1,000s) by State and Component (ALE) were Montana (\$13,987), Colorado (\$12,948), and California (\$9,578). The top three by WRE component were Arkansas (\$15,041), Louisiana (\$14,738), and Iowa (\$12,693).

In 2017, the top three states with the most ACEP FA Obligations (1,000s) by State and Component (ALE) were Montana (\$21,151), Utah (\$10,563), and Washington (\$9,385). The top three by WRE component were Arkansas (\$40,908), Florida (\$36,936) and Louisiana (\$18,646).

In addition to participant race data, trends in participant gender data was also examined. For female participants in ACEP-ALE, there were 15 in FY 2015 and 25 in FY 2017. Male participation in ACEP-ALE was 63 in FY 2015 and 114 in FY 2017. In ACEP-WRE during FY 2015 the number of agreements executed by female participants was 20 and 40 in FY 2017. ACEP-WRE showed a similar increase in agreements starting at 112 executed by male participants in FY 2015 and 368 in FY 2017.

D. Eligibility Criteria

ACEP is a voluntary program. To participate in ACEP, the land, the landowner, and if applicable, the eligible entity, must meet program eligibility requirements.

Land eligibility requirements under the agricultural land easement component include, but are not limited to: the land must be private or Tribal land subject to a written pending offer from an eligible entity that administers a farm or ranch land protection program; the land must contain at least 50 percent prime or unique farmland, or other appropriate designation; the land must be owned by eligible landowners; and the land must possess suitable onsite and offsite conditions to meet the purposes of the program.

Land eligibility requirements under the wetland reserve component include, but are not limited to: the land must be private or Tribal land upon which eligible farmed and converted wetlands can be

successfully and cost-effectively restored and protected; the land must maximize wildlife benefits and wetland functions and values; the land is farmed or converted wetland together with adjacent lands that are functionally dependent; or the land meets other technical land eligibility criteria.

E. Outreach Strategy

Outreach is an integral part of the overall delivery of the NRCS programs and services to customers and potential beneficiaries. NRCS conducts business to ensure that all programs and services are made equally accessible to all customers, with emphasis on the traditionally underserved, minority-serving institutions and persistent poverty communities. Outreach allows NRCS to be creative and innovative in the way the agency achieves its mission of “Helping People Help the Land.” NRCS considers outreach as an ongoing informational campaign designed to educate the public and make them aware of who we are and what we do.

NRCS works in coordination with other USDA and Federal agencies to ensure that we are consistent with our outreach approach to serve Historically Underserved (HUS) producers and populations in rural and urban America.

NRCS continues to collaborate and work with a variety of Community Based Organizations (CBO) to include Asian, Hispanic, and African American serving institutions, Tribes, Tribal Entities, Federal and State agencies and other groups that have a similar interest to ensure that the 2018 Farm Bill and all provisions are made available to all that apply and meet the required program eligibility. The 2017 U.S. Department of Agriculture Census of Agriculture will serve as the basis for identifying the historically underserved populations with the most critical conservation needs and assist in targeting outreach program assistance.

GOALS

- Increase by 30 percent the number of strategic outreach partnership agreements to assist with promoting NRCS financial assistance conservation programs to historically underserved populations. To be completed by January 1, 2020. This goal will be evaluated annually based on needs and available funding.
- Increase by 10 percent the number of eligible program applications received from historically underserved populations using FY 2018 application data as the baseline. To be completed by November 30 of each year.
- Ensure that 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. Ongoing.
- Educate and inform NRCS employees regarding the unique nature of working with Historically Underserved and tribal audiences. Ongoing. Will occur at state meetings and during scheduled VTC's with states.
- Educate and inform existing NRCS customers and potential new NRCS customers on NRCS conservation programs available to them through the 2018 Farm Bill using plain, understandable language. Ongoing.
- Tailor Farm Bill outreach messages and products to specific audience needs, for example providing translated materials, graphically-enhanced materials, and readable, common-sense messaging. Ongoing. Will develop as needs are identified.

- Successfully obligate Farm Bill financial and technical assistance dollars to align with USDA Strategic Goals. Ongoing.
- Value of Conservation: Highlight the value of private lands conservation and the important role that agricultural producers play in voluntarily conserving the nation's resources. Ongoing.

NRCS staff must use every imaginative tool possible to enlighten and assist agricultural producers attain their economic, natural resource and environmental goals. The agency is aware which States have some of the oldest median age of agricultural producers in the United States. An aging population, advances in agricultural technology, and long-standing customs, tradition, and Tribal hierarchy require a balance of traditional or 'old school' with ground-breaking or 'new wave' approaches to working with the NRCS customers.

The agency structure at the State level consists of one State Outreach Coordinator to provide advice and recommendations to the State Conservationist on State specific outreach priorities. States have the flexibility to develop outreach plans to meet their specific needs. The National Outreach & Partnership Division (OPD) will work with the Outreach State coordinators to provide general and specific techniques that are flexible and beneficial to the success and outcome of our conservation program participation and services. State Outreach Coordinators should work with the OPD staff to implement training tools and techniques that are transparent and can be synchronized with the Outreach training course.

NRCS will continue to collaborate at the national and local level with community-based organizations through cooperative partnership agreements which assist new immigrant farmers, specialty crop farmers, and limited resource and socially-disadvantaged farmers and ranchers with technical assistance, on-site demonstrations, program awareness, inner-city urban agriculture, land loss prevention, and training opportunities.

NRCS will continue to partner with tribal entities to conduct face-to-face educational meetings and workshops with tribes and their members to further explain 2018 Farm Bill programs. These entities will not only assist with identifying barriers within the 2018 Farm Bill that impede tribes and their members from participation in programs and will also provide the agency with verifiable data that will assist agency leadership in making sound decisions that will limit major program participation obstructions.

NRCS has knowledgeable staff and strong partners who can assist producers to understand the changes in the 2018 Farm Bill for them to address any barriers that may impede a producer's or tribes' participation.

Understanding the 2018 Farm Bill and all provisions that may apply to one's farming operation can be complex and confusing. NRCS is committed to ensuring impacted persons receive high quality service and the information necessary to comply with the policies and regulations of the program or programs in which they apply and will strive to minimize administrative burden.

NRCS provides one-on-one, personalized advice on the best solutions to meet the unique conservation and business goals of those who grow our nation's food and fiber.

NRCS works with all types of agricultural producers, including non-traditional producers, such as organic and urban farmers; underserved audiences, such as veterans and beginning farmers; tribes and individual tribal members.

NRCS helps people make investments on their farming operations and local communities to keep working lands working, boost rural economies, increase the competitiveness of American agriculture, and improve the health of our air, water, soil, and habitat.

NRCS generates, manages and shares the data, technology and standards that enable partners and policymakers to make decisions informed by objective, reliable science.

AUDIENCES

EMPLOYEES	NRCS employees – national, state and local offices Other USDA employees within the Farm Production and Conservation (FPAC) mission area. Focus will be on effective messaging and strategies to reach underserved audiences
HISTORICALLY UNDERSERVED AGRICULTURAL AUDIENCES	Beginning Farmer/Ranchers Veteran Farmer/Ranchers Socially Disadvantaged Farmer/Ranchers Minority farmer/rancher organizations Women-owned farmer/rancher organizations
TRIBES	Native American Tribes across the United States Bureau of Indian Affairs Tribal interest organizations such as Intertribal Agriculture Council
NGOS/NON-PROFITS	Non-governmental organizations and Universities/Colleges including land grant Universities with a focus on underserved audiences and tribes. Examples include: Farmer Veteran Coalition, tribal colleges, 1890, 1994 colleges, minority serving institutions
AGRICULTURAL PRODUCERS	Farmers Ranchers Non-Industrial Private Forest Owners
SWCD-Related PARTNERS	National Association of Conservation Districts National Associations of RC&D Councils National Association of State Conservation Agencies National Conservation Employee Association Soil and Water Conservation Districts
STATE and FEDERAL PARTNERS	State Departments of Agriculture; Fish and Wildlife/Game; Forestry; and other natural resource-related agencies Federal agencies related to natural resources management, including but not limited to: U.S. Fish and Wildlife Service Bureau of Land Management U.S. Army Corps of Engineers Bureau of Reclamation NOAA National Marine Fisheries USDA Farm Service Agency USDA Forest Service USDA Risk Management Agency Other USDA Agencies

Tribal Government Relations and Impact Statement

Overview: NRCS provides conservation programs and technical assistance to American Indians, Alaska Natives (AIAN) and Tribal governments. NRCS adheres to all Executive Orders concerning government-to-government relations fulfilling the agency's trust responsibility to tribes and tribal individuals. This is done through 45 full-time and 30 part-time field offices on Indian lands and through numerous other field offices located off Indian lands.

NRCS continues to make concerted efforts to improve the USDA conservation program delivery and technical assistance to AIAN and Tribal governments. Working with the Indian Nations Conservation Alliance (INCA) NRCS has assisted with the establishment of 54 Tribal Conservation Districts and four State Tribal Conservation Advisory Councils. Additionally, to further strengthen working relationships with Tribes, NRCS established three regional Tribal Conservation advisory councils in 2012. The agency uses these councils to assist in establishing regular and meaningful consultation and collaboration with tribal representatives and officials in the development of Federal policy that has tribal implications. The councils assist NRCS's Chief, Regional Conservationists, and State Conservationists in strengthening government-to-government relationships and clarifying lines of communication and consultation with American Indian Tribes. Each council holds three meetings annually.

NRCS also enters into grant, cooperative and contribution agreements with tribal organizations that can help NRCS improve working relationships with Indian tribes and works closely with other USDA agencies to promote a seamless delivery system to conservation programs.

Indian Country: NRCS has been working in Indian Country for a quarter century. In 1980, NRCS offices opened their doors to tribal lands, providing programs and technical services to AIAN and tribal governments. In addition to the 45 full-time and 30 part-time field offices on Indian lands, there are approximately 150 NRCS tribal liaisons serving 573 Federally-recognized tribes. The agency has over 300 AIAN employees. To date, the Secretary of Agriculture has entered into mutual agreements with 54 Tribal Conservation Districts, including 19 in Alaska.

Purpose and Policy: In furtherance of the unique status of Indian Tribes, their members, and the government-to-government relationship between the United States and Indian Tribes, the NRCS has developed policy to provide guidance for interactions with Indian Tribes and their members.

- NRCS, as a federal agency, acknowledges the trust responsibility relationship between the federal government and Indian Tribes as established by specific statutes, treaties, court decisions, executive orders, regulations and policies.
- NRCS will consult and work with Indian Tribes before making decisions or implementing policy, rules or programs that may affect an Indian Tribe to ensure that tribal rights and concerns are addressed.

- NRCS will identify and take appropriate steps to remove impediments to working directly and effectively with Indian Tribes.
- NRCS will work with other federal agencies and other governmental or non-governmental entities to further the goals of this policy.
- NRCS will work with Indian Tribes to achieve their goal of self-sufficiency.

Partnerships: As tribes move into more active roles of land management and use the authorities available to them, NRCS will work to increase the opportunities for them to benefit from NRCS programs and to help NRCS benefit from the tribal interactions. The AIAN has always been involved in the stewardship of their ancestral lands. NRCS shares these values and knows that mutual respect is the key ingredient to further government-to-government relations. The tribes have a rich heritage in the knowledge of land, water, wildlife, air and soils and NRCS works to partner this knowledge with its own. To accomplish this, NRCS has established agreements with INCA, Intertribal Agricultural Council (IAC), American Indian Higher Education Consortium (AIHEC), United South Eastern Tribes, Inc. (USET), First Nations Development Institute (First Nations), Indigenous Food and Agriculture Initiative (IFAI), and many others to further our presence in Indian Country.

Tribal Impact Statement

Pursuant to EO 13175, there is no negative impact for American Indians, American Indian tribes, and tribal entities.

F. Barrier Removal Provisions

The following barriers to participation have been identified based on participant feedback in past focus groups and listening sessions: there is a distrust of the federal government because of past class action cases; a misunderstanding of easements and how they differ from grants; absence of a clear land title or the inability to demonstrate control of the land for enrollment purposes; lack of funding based on the cyclical application process; a desire for a higher cost share from the government for limited resource and minority participants; complaints about non-responsive field offices and non-utilization of technology allowing farmers to conduct business with the agency from the farm; non-compliance with receipt-for-service requirements; inconvenient office hours and service locations; lack of diversity in the workforce; delays due to contract modifications; a desire to expand projects covered; unique challenges faced by American Indians because of their government-to-government relationship with the federal government and their unique way of operating.

The National Outreach Division is requesting that State Outreach Program Managers further analyze these issues above so that they can develop more targeted approaches to outreach and increased participation. They have also been requested to incorporate feedback gleaned from 2019 Farm Bill Listening Sessions.

The Civil Rights and EEO Division is also working with the Regional Conservationists and have arranged to monitor state outreach plans and progress towards meeting measurable milestones by issuing a bi-annual call letter to the states requesting status reports.

G. Conclusion

The civil rights review of the ACEP Interim Rule discloses no disproportionate or adverse impacts for minorities, women, or persons with disabilities. The data presented indicates landowners who are members of the protected groups have participated in NRCS conservation programs in proportion with other landowners. Specific program outreach efforts target groups such as American Indian tribes. NRCS' partnerships with the local working groups and Conservation Districts, as well as the USDA Office of Tribal Relations, have increased participation in NRCS easement programs.

Extrapolating from historical participation data, it is reasonable to conclude that NRCS programs, including ACEP, will continue to be administered in a non-discriminatory manner. Outreach and communication strategies are in place to ensure all landowners will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in USDA programs. ACEP applies to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, the ACEP Interim Rule portends no adverse civil rights implications for women, minorities, and persons with disability.

H. Certification

I certify that the review and analysis of the ACEP Interim Rule has been conducted in accordance with DR 4300-4, "Civil Rights Impact Analysis"; 7 C.F.R. part 15, "Nondiscrimination in Programs and Activities Conducted by USDA"; and DR 1512-1, "Regulatory Decision-Making Requirements." The ACEP Interim Rule portends no adverse civil rights implications for women, minorities, and persons with disabilities.



7/18/19

Emily H. Su
Director

Date

Civil Rights and Equal Employment Opportunity Division
Farm Production and Conservation Business Center