

Interim Fiscal Year (FY) 2019 Agricultural Conservation Easement Program (ACEP) Guidance

Administration of Valid, Active Agreements Enrolled Prior to FY 2019

States are authorized to continue all necessary actions to complete due diligence, survey, close, record, and planning on all prior-year ACEP enrollments with valid, active enrollment agreements. These activities include but are not limited to, the procurement and finalization of easement boundary surveys, procurement and review of any remaining due diligence items on prior year enrollments, completion of acquisition and closing, completion or review of ALE plans, completion of final wetland reserve plans of operations (WRPOs), and other preclosing activities. States may utilize allocated ACEP funding for all such activities.

Actions on Existing Easements

States should also continue all activities related to servicing existing easements and States are authorized to use allocated ACEP funds for such activities. For example, for ACEP-WRE, States should continue work to complete any remaining restoration designs and final WRPOs, enter into easement restoration agreements, manage and conduct required reviews on supplements for the preliminary obligation of restoration funds, and implement restoration activities.

States are also highly encouraged to conduct monitoring during this early part of FY 2019, while actions on new applications and enrollments may be limited and in anticipation of a compressed period of time for new enrollment actions later in FY 2019.

Until further notice, States are authorized to continue restoration and repair work on WRP as needed using repealed funding as available. If a State wishes to utilize ACEP funding for repealed easement program activities (WRP, FRPP, or GRP), they must contact the national program manager for advance approval.

Initial Processing of New and Existing Unfunded ACEP Applications in FY 2019

Until further guidance is provided, State conservationists may not announce new funding opportunities or application cutoff dates for ACEP. States will continue to accept new applications for ACEP on a continuous basis, entering such applications into the National Easement Staging Tool (NEST), and may continue with limited processing of new or existing unfunded applications as described in this guidance. Applicants submitting an application in FY 2019 or inquiring about the status of an unfunded application submitted in a prior fiscal year should be informed that, in general, NRCS will not be making new selections for funding or entering into new FY 2019 ACEP enrollment agreements at this time.

Such applicants should also be notified that due to the expiration of the Farm Bill and the outcome of pending legislation being unknown at this time, that program requirements are subject to change. Changes in program requirements may necessitate new applications to be submitted and may require updates to NEST application records, eligibility, ranking, due diligence, proposed easement configuration, and other attributes of applications before they may be considered and selected for funding under a new Farm Bill.

As the fiscal year and pending legislation progresses, States will be provided additional guidance on updates and requirements to complete the processing of applications, making new selections for funding, and entering into FY 2019 ACEP agreements on such newly selected applications.

Initial Eligibility Determinations and Ranking for New or Existing Unfunded ACEP Applications

During this interim period, States are encouraged to continue evaluating new applications or high-ranking, unfunded applications from prior fiscal years, to the extent possible. This may include conducting offsite mapping and initial planning, initial onsite visits and interviews with landowners, all with the understanding that determinations and documentation may have to be updated or recompleted in accordance with any new requirements resulting from the enactment of a new Farm Bill. A few examples of the types of activities States are authorized and encouraged to engage in are described below:

- Conduct onsite visits to make initial land eligibility determinations or conduct resource assessments, including any initial determinations if there are conditions that would potentially render the site ineligible.
- Review the land ownership information provided by the landowner or entities to ensure that NRCS has the most current evidence of ownership documents and that all required landowners have SCIMS records and any needed HEL/WC compliance info. States should explain the existing adjusted gross income (AGI) limitations to landowners and also explain that the AGI limitations may change in a new Farm Bill. Therefore, for new applications States are not required to collect AGI forms at this time. Landowners that elect to submit their AGI information at this time should be informed that the information is likely to have to be updated or resubmitted under a new Farm Bill.
- Conduct the onsite investigation and landowner interview portions of the limited Phase-1 for Hazardous Materials, but do not fully sign the documents at this time and inform the landowner that a subsequent interview and site visit may be necessary before completing the documents and obtaining the required signatures.
- Conduct the interview of the landowner for the “Landowner Disclosure Worksheet,” inform the landowner of any items preliminarily identified that may require resolution before their application could be further considered, and again, inform them that a subsequent interview may be needed to fully complete the document and before obtaining all required signatures.
- To prioritize workload, States may elect to conduct ranking on new applications based on existing ranking criteria to get a sense of how an application might rank, however, States must be aware that there is a high likelihood that rankings will have to be redone in accordance with any updated ranking requirements and criteria before any new applications can be selected for funding in FY 2019.

At this time, States are not authorized to use their existing FY 2019 ACEP FA allocation for the procurement of preliminary due diligence or preliminary title work for new or existing unfunded applications. States may submit a request by email to the appropriate national program manager for specific ACEP FA funds and authorization to conduct such activities. The request must identify the types of items to be procured (e.g., Environmental Database Records Search, Preliminary Title Report) and the approximate number and per-unit costs

for each type of item, and total amount being requested. The number of requests should be supported by applications in NEST. Given the limited amount of ACEP funds currently available, fund requests may not be approved or may not be approved in their entirety. States may not proceed with the procurement of these preliminary due diligence items for new or existing unfunded application without specific written authorization from the appropriate national program manager. The priority use of the limited ACEP FA funds is for the administration of existing enrollments and easements as described in the first two sections of this bulletin.

Providing Information on ACEP Agreements and Deed Requirements to New Applicants

As new applications are received, States may provide copies of the existing agreement, contract, and deed documents, and explain to the applicant that acceptance of the terms of the agreements, deeds, and contracts as written is required as a condition of participation in ACEP. Applicants must be informed that existing agreements, contracts, and deeds being provided as examples will likely be updated due to pending Farm Bill legislation, and will be provided to them before NRCS proceeds with any enrollment of applications.

States will be notified in future guidance if enrollment of ACEP applications is authorized in FY 2019, at which time any updated agreements, contracts, or deeds that must be used for such enrollment will also be provided.

ACEP Internal Control (IC) Reviews in FY 2019

Program-specific FY 2019 IC preobligation checklists to be used for enrollment of applications newly selected for funding in FY 2019 will be provided in future guidance. All prepayment checklists to be used for existing enrollments, are found as attachments to NI 300-300 (as amended).

ACEP-ALE Entity Certification

NRCS may continue to process requests for certification from eligible entities in accordance with existing regulations and policy, until a new Farm Bill is enacted. Certification requests that are pending at the time of enactment of the new Farm Bill, must be considered under the terms of the new Farm Bill. States are encouraged to coordinate with the national ACEP-ALE Program manager on the processing of certification requests received during this interim period.