



May 15, 2015

Regulatory and Agency Policy Team
Strategic Planning and Accountability
U.S. Department of Agriculture
Natural Resources Conservation Service
5601 Sunnyside Avenue, Building 1–1112D
Beltsville, MD 20705

**RE: Comments on the Agricultural Conservation Easement Program Interim Rule
Docket No. NRCS–2014–0011; Submitted online via regulations.gov**

The National Sustainable Agriculture Coalition (NSAC) welcomes the opportunity to provide comments on the Agricultural Conservation Easement Program (ACEP) Interim Final Rule (IFR). NSAC's represented members¹ include family farm, rural, and conservation organizations across the country that share a commitment to federal policy that promotes sustainable agriculture production systems, family-based farms and ranches, and healthy, vibrant rural communities.

Many of our member organizations work directly with farmers and Natural Resources Conservation Service (NRCS) field staff to promote NRCS conservation programs at the state and county level; participate on State Technical Committees and in Local Working Groups; and have participated in ACEP and the easement programs that preceded it. We engaged extensively in the development of ACEP during the multi-year process that became the 2014 Farm Bill; and following the passage of the bill, we delivered pre-rulemaking recommendations to NRCS on a number of our proprieties. Our comments below build upon the recommendations that we delivered in the spring of 2014.

1. Breakdown of funding between wetland easements and agricultural land easements

Recommendation: NRCS should maintain the historical division in funding between wetlands easements and agricultural land easements. This has on average meant that roughly 70 percent of easement funding is dedicated to wetland conservation.

Neither the 2014 Farm Bill nor the Interim Final Rule dictates how ACEP funding should be divided between wetland easements and agricultural land easements. We support the goals of the

¹ Agriculture and Land Based Training Association, Alternative Energy Resources Organization, California Certified Organic Farmers, California FarmLink, C.A.S.A. del Llano (Communities Assuring a Sustainable Agriculture), Catholic Rural Life, Center for Rural Affairs, Clagett Farm/Chesapeake Bay Foundation, Community Alliance with Family Farmers, Dakota Rural Action, Delta Land and Community, Ecological Farming Association, Farmer-Veteran Coalition, Fay-Penn Economic Development Council, Flats Mentor Farm, Florida Organic Growers, Grassworks, Hmong National Development, Illinois Stewardship Alliance, Institute for Agriculture and Trade Policy, Interfaith Sustainable Food Collaborative, Iowa Natural Heritage Foundation, Izaak Walton League of America, Kansas Rural Center, Kerr Center for Sustainable Agriculture, Land Stewardship Project, Michael Fields Agricultural Institute, Michigan Integrated Farm and Food Systems, Michigan Organic Food and Farm Alliance, Midwest Organic and Sustainable Education Service, National Center for Appropriate Technology, Nebraska Sustainable Agriculture Society, Northeast Organic Dairy Producers Alliance, Northern Plains Sustainable Agriculture Society, Northwest Center for Alternatives to Pesticides, Ohio Ecological Food and Farm Association, Oregon Tilth, Organic Farming Research Foundation, Rural Advancement Foundation International – USA, Union of Concerned Scientists Food and Environment Program, Virginia Association for Biological Farming, Wild Farm Alliance.

agricultural land easement component of ACEP. It is critical to conserve our remaining grasslands, especially native grasslands, through long-term and permanent easements. Moreover, it is imperative that working farmland is protected against development. However, the 2014 Farm Bill severely limits the amount of funding available for wetland conservation relative to the 2008 Farm Bill and earlier farm bills. This is cause for concern and convinces us that at least 70 percent of the funding for the new combined program needs to be for wetland restoration.

The 2008 Farm Bill provided an average of \$410 million per year for WRP. Annual outlays for WRP often exceeded \$500 million. In FY 2014, NRCS allocated roughly 68 percent of ACEP funding for wetland easements, totaling \$223 million. Annual acreage enrollment was cut from roughly 200,000 under the 2008 Farm Bill to less than 55,000 acres in FY 2014. In order to continue to protect both wetlands and agricultural lands, NRCS should maintain the historical division of funding between wetland easements and agriculture land easements.

2. Apportionment of mandatory funding for technical assistance

Recommendation: NRCS should continue to use its authority to apportion adequate technical assistance dollars for wetland restoration through ACEP.

One of the most persistent problems with the former WRP was the shortfall in the technical assistance (TA) dollars needed to restore wetlands. Over the years, the Office of Management and Budget (OMB) has consistently shortchanged NRCS in the amount of TA funding that OMB apportions for WRP. As a result, a very significant wetland restoration backlog developed.

Fortunately, the 2014 Farm Bill transferred TA apportionment authority from OMB to USDA. Rather than OMB making decisions about how much TA funding is adequate for wetland restorations, the Farm Bill now leaves that decision to the Secretary. We commend NRCS for increasing the proportion of mandatory funding apportioned for technical assistance under ACEP in FY 2014, and we encourage you to continue to utilize this new flexibility into the future to ensure that full and timely restoration work is achieved.

3. Match Requirements for Wetland Reserve Enhancement Projects

Recommendation: NRCS should offer the wetlands reserve enhancement option through both ACEP and RCPP; and the matching rules that applied to the former WREP (as detailed below) should apply to the renewed wetlands reserve enhancement option.

The new farm bill reauthorizes a wetlands reserve enhancement option—formerly known as the Wetlands Reserve Enhancement Program (WREP)—through which NRCS partners with states, non-governmental organizations, or Indian Tribes to protect, restore, and enhance wetlands in state-designated priority areas such as floodplains and riparian areas.

Under the 2008 Farm Bill, NRCS administered WREP primarily as a component of the Cooperative Conservation Partnership Initiative (CCPI). WREP project partners were required to provide:

- In-kind only contributions of at least 20 percent of the restoration costs; or
- Cash only contributions of at least 5 percent of the restoration costs; or

- A combination of in-kind and cash contributions of at least 20 percent of the restoration costs.

The 2014 Farm Bill replaced CPPI with RCPP. NRCS has a goal of securing a 50 percent match, including in-kind contributions, from partners for RCPP projects. While this is not a statutory or administrative requirement, NRCS has determined that it will assign *30 percent* of the RCPP proposal ranking points based upon the extent to which the partner covers the cost of the project.

We are greatly concerned that these same ranking criteria will be applied to wetlands reserve enhancement projects, if NRCS administers the wetlands reserve enhancement option as an adjunct to RCPP. Under that scenario, the wetlands reserve enhancement option would be severely undermined, as very few eligible partners would be able to come up with sufficient matching funds to make their bid competitive. Therefore, it is imperative that WREP operate under both RCPP and ACEP with the same match provisions as applied to WREP under CCPI.

4. Consultation with State Technical Committees

Recommendation: The final rule should require state conservationists to consult with State Technical Committees on the identification of lands of statewide importance, development of a priority ranking process, and related technical matters.

Section 1468.2(b) of the IFR states: “NRCS *may* seek advice from the State Technical Committee on the identification of lands of statewide importance, development of a priority ranking process, and related technical matters” (emphasis added).

The Food Security Act of 1985, as amended, requires that “each State technical committee shall advise the Secretary in establishing priorities and criteria for the programs in this title...” The State Technical Committees play a critical role in helping NRCS ensure that local priorities are being addressed. Statute recognized this by making such consultation a requirement, and the ACEP final rule should do the same.

5. Authority to Waive Adjusted Gross Income Limitation

Recommendation: The final rule should *not* authorize the Chief to waive the AGI limitation for any producers, including producers involved in RCPP projects.

Section 1468.2(i) of the Rule states that the Chief may waive the statutory AGI limitation of \$900,000 per year “if the waiver is necessary to fulfill RCPP objectives.”

Congress has long maintained that providing conservation financial assistance to the country’s wealthiest farmers and landowners is misuse of taxpayer dollars. While the 2014 Farm Bill does authorize the Chief to waive the AGI limitation for some producers who seek to participate in RCPP projects, the Bill actually lowers the AGI limitation from \$1 million to \$900,000 for all other producers. We strongly oppose using taxpayer dollars to support multi-millionaire farmers and landowners, and urge NRCS to refrain from issuing AGI limitation waivers.

We also note that with demand far outstripping supply of RCPP dollars, there will be no cases when a waiver will be “necessary to fulfill RCPP objectives” as there will be a large number of worthwhile projects to choose that fulfill the program’s objectives without requiring the transfer of money to the super wealthy.

Should the agency retain the waiver provision in the rule, and should it decide to use the waiver, we urge you to make each and every waiver a matter of public information in a searchable format on the NRCS website and to add that disclosure provision to the final rule.

6. Match associated with Regional Conservation Partnership Program projects

Recommendation: The final rule should allow the Chief to recognize as in-kind RCPP match, eligible entity and/or landowner costs for appraisals, area-wide market analysis, legal surveys, access, title clearance or title insurance, legal fees, development of agricultural land easement plans or component plans, cost of easement monitoring and other related implementation costs, if the Chief determines that allowing such in-kind match will advance the purposes of ACEP and RCPP.

We recommend adding a new subsection, 1468.2(i), to authorize the Chief to assist in RCPP implementation by counting these costs toward the partner contribution as part of an RCPP-ACEP project.

RCPP has high goals for leveraging federal funds. Clarification of matching opportunities is needed to attract more ACEP use in RCPP proposals. The expenses listed above should be considered when calculating match so that all costs related to a project that are incurred by the eligible entity or landowner are recognized and allowed to be counted as in-kind match. This will incent greater participation in the program.

7. Increasing Conservation Values of the Land

The final rule should recognize that the purpose of ACEP is to protect and improve agricultural lands and related conservation values.

Recommendation: Modify Section 1468.20(a) as follows (new text is underlined, proposed deletions are in strikethrough):

General. (1) Under ACEP–ALE, NRCS will facilitate and provide cost-share assistance for the purchase by eligible entities of agricultural land easements or other interests in eligible private or Tribal land that is subject to a written pending offer from an eligible entity for the purpose of: (i) protecting the agricultural use, including grazing, and related conservation values of the land by limiting nonagricultural uses of the land; and (ii) protecting and enhancing related conservation values of the land.

Recommendation: Modify Section 1468.22(c)(5) of the state ranking criteria as follows (new text is underlined): “Diversity of natural resources to be protected and improved;”

As an NRCS conservation program, ACEP-ALE must operate as both an agricultural land protection program *and* a natural resource conservation program, in equal measure. NRCS should strive to enhance water quality, soil quality, wildlife habitat and other natural resources on all

easements under ACEP, and should write the final rule in a manner that consistently reveals that dual purpose.

8. Concentrated Animal Feeding Operations

Recommendation: The final rule should make Concentrated Animal Feeding Operations (CAFOs) ineligible for ACEP funding by adding CAFOs to Section 1468.20(e), “ineligible land.”

The preamble to this IFR states: “The net conservation effects through time from farmland protection include direct access benefits (pick-your-own, agrictourism, and nature based activities like hunting), indirect access benefits (open spaces and scenic views) and nonuse benefits (wildlife habitat and existence values).”

Large-scale CAFOs do not provide any of the benefits listed above. Rather, they cause significant environmental and public health threats. In addition to emitting air pollutants such as hydrogen sulfide and volatile organic chemicals, CAFOs are a significant source of water pollutants, including nitrogen, phosphorus, pathogens, antibiotics, pesticides and heavy metals. The EPA reports that the waste generated by large-scale conventional hog, chicken, and cattle operations has polluted tens of thousands of miles of rivers as well as groundwater in 17 states. NRCS should not be using taxpayer dollars to pay for easements on these lands.

9. Climate Change and Pollinators

Recommendation: We commend USDA for including “climate change resiliency” on the list of state and local criteria in Section 1468.21(c). NRCS should encourage state conservationists to prioritize easements that establish and maintain perennial cover and other practices to sequester carbon, limit greenhouse gas emissions, and improve soil health. Similarly, we recommend that the final rule add pollinator habitat conservation to the list of state and local criteria alongside climate change resiliency. NRCS should encourage state conservationists to prioritize easements that take steps to conservation and enhance pollinator habitat.

Not all easements are equal in terms of the climate benefits that they convey; and it can be difficult to assess and predict climate benefits. However, RMS conservation planning can support the management of perennial cover, rotational grazing, and other activities that sequester carbon and build resiliency. RMS planning can also help producers conserve and improve pollinator habitat over time. NRCS should prioritize easements that include strong conservation plans that address climate change resiliency and pollinator habitat.

10. Impervious Surfaces

We make the following recommendations regarding impervious surfaces:

Recommendation: Within the national ranking criteria for ALE, the final rule should modify 1468.22(b)(2) as follows (new text is underlined): “Percent of cropland, rangeland, grassland, historic grassland, pastureland, or nonindustrial private forest land in the parcel to be protected, not including impervious surfaces;”

Recommendation: Section 1468.25 of the final rule should limit impervious surface area to 2 percent of the easement, unless NRCS grants a waiver as follows: (a) NRCS may waive the 2 percent limitation on an individual easement basis, provided that no more than 5 percent of the easement area is covered by impervious surfaces, (b) NRCS may waive the 2 percent limitation for farms of 25 acres or less, provided that no more than 10 percent of the easement area is covered by impervious surfaces.

Recommendation: Section 1468.25 of the final rule should *not* exempt NRCS-approved conservation practices from the impervious surface limitation.

Recommendation: Section 1468.25(f)(3)(iii) should be modified as follows: “Before waiving the 2 percent limitation, NRCS will consider, at a minimum, population density; the ratio of open, prime, and other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the impact to soil quality and quantity concerns in the area; the type of agricultural operation; parcel size; and the purposes for which the easement was acquired,[...]”

Between 2003 and 2011, USDA allowed FRPP easements to contain “impervious surfaces, which includes residential buildings, agricultural buildings (with and without flooring), and paved areas, both within and outside the conservation easement’s building envelope(s)” not to exceed 2 percent of the total easement acreage.

Before publishing the FRPP Interim Final Rule in 2009, USDA allowed State Conservationists to waive the 2 percent limitation, allowing up to 6 percent impervious surface, if certain conditions were met (easements had to be located in a densely populated area, contain a large amount of open prime and important soil, and be less than 50 acres in size).

Unfortunately, when published in 2009, the IFR allowed for waivers on a parcel-by-parcel basis up to 6 percent *without* the previous language limiting the exceptions to small farms of less than 50 acres in size located in densely populated areas. NSAC objected to this change.

In 2011, the FRPP Final Rule not only continued to allow State Conservationists to waive the 2 percent impervious surface limitation, up to a 10 rather than 6 percent limit, it also allowed eligible entities to develop and submit their own impervious surface waiver process for review by the State Conservationist. If approved, the waiver process would be applied by the entity on a parcel-by-parcel basis.

Moving even one step further down the road away from a program to preserve farmland, the Final Rule also exempted many animal waste lagoons from the very definition of an impervious surface by excluding “conservation practices identified in the FOTG and in a conservation plan for the subject farm or ranch.” Provided the lagoon or other storage or treatment site is part of the farm’s conservation plan, it will now be outside of the impervious surface limit altogether. This exemption should be modified in the ACEP final rule.

The ACEP Interim Final Rule maintains the most recent, weakest version of the impervious surface limitation. The 10 percent limitation and the exemption of waste storage and treatment facilities will result in a greater number of industrial confined animal feeding operations enrolled in ACEP. The impervious surface waiver provision and definitional change within the FRPP Final Rule was completely contrary to the letter and spirit of the FRPP authorization. This is even truer today

under ACEP's consolidated agricultural land easement component, which includes both grassland protection easements and farmland protection easements.

Finally, in waiving the 2 percent impervious surface limitation, NRCS should consider not only water quality impacts, but also impacts on soil quality and quantity. Would a waiver lead to the loss of prime topsoil, for example? NRCS should ask this question when granting waivers.

11. Expiring CRP Acres

Recommendation: We support and thank NRCS for the inclusion of expiring CRP acres on the list of national ranking criteria in Section 1468.22(b).

Over the next five years, nearly 8 million acres will expire from CRP; another 4.5 million acres are set to expire in 2020. We believe strongly in the goal of keeping these environmentally sensitive acres in resource-conserving cover. We therefore urge you to prioritize these enrollments and to encourage the adoption of conservation management activities, such as rotational grazing, perennial plantings, high-residue cover cropping, buffer strips, prairie restoration, and other similar activities.

12. Conservation Planning

Recommendation: We support the Resource Management System planning language in the preamble, and we strongly recommend that similar language be included in the rule itself. The final rule should clarify that NRCS, a technical service provider, or a certified conservation planner should develop the Agricultural Land Easement plan.

The preamble to the IFR states: "The development of a robust and comprehensive ALE plan, such as a plan at the NRCS Resource Management System planning level, is encouraged as such, may include both required and recommended practices. NRCS recommends that NRCS' planning procedures, conservation practices, and standards and specs be used to develop the ALE plans."

This language is a major step toward ensuring that ongoing resource stewardship is a core component of agricultural land protection.

To ensure that real conservation outcomes are achieved on agricultural land easements, **we recommend the following modifications** to the rule (new text is underlined, proposed deletions are in strikethrough):

- Modify the definition of ALE plan as follows: *Agricultural land easement plan* means the a site-specific document developed by NRCS or provided by the eligible entity and approved by NRCS, in consultation with the eligible entity and landowner, that describes the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired. The agricultural land easement plan includes a description of the farm or ranch management system, a comprehensive conservation plan that describes the schedule of operations and activities ~~practices~~ that address the resource concerns to the Resource Management System level for which the easement was enrolled, and any required component plans such as a grasslands management plan, forest management plan, or conservation plan as defined in this part. Where appropriate, the agricultural land easement plan will include

conversion of highly erodible cropland to less intensive uses.

- Change the term “conservation plan” to *Highly Erodible Land Conservation Plan* in Section 1468.3 and throughout. “Conservation plan,” as defined in 1468.3 of the IFR, is narrowly focused on HEL. It should therefore be re-termed as *Highly Erodible Land Conservation Plan*. Apart from having an HEL plan where applicable, each ALE plan should include a comprehensive conservation plan that addresses resource concerns to the RMS level in addition to addressing farmland preservation concerns (see above recommendation).
- Add the following to Section 1468.26, agricultural land easement plan: The ALE plan should plan to the Resource Management System level. The plan should be site-specific, comprehensive, and action oriented, and should describe the schedule of operations and activities needed to solve identified natural resource problems.
- Modify Section 1468.26(a)(2) as follows: Identify required and recommended conservation practices that address ~~the purposes and~~ resource concerns to the Resource Management System level for which the parcel was selected;
- Reword the conservation planning language on pp. 11035 of the preamble to align more closely with Section 1468.26 of the IFR: The eligible entity is responsible for ~~the development of obtaining and delivering to NRCS an ALE plan, though NRCS may provide technical assistance in the development of the ALE plan or any of the component plans which~~ must be developed by NRCS, a qualified TSP, or an NRCS-certified conservation planner with current certifications, working directly with the farmer or farmers involved.

13. Multiple Property, Multiple Benefit, Wetland-Wildlife Complexes

Recommendation: The final rule should modify Section 1468.32(c) to allow state conservationists the flexibility to prioritize partnerships that target multiple benefit, multiple landowner, and outstanding wetland wildlife complexes.

We recommend the following modification to 1468.32(c) (new language is underlined):

(c) NRCS, in consultation with the State Technical Committee, may place higher priority on:

- (1) Certain land types or geographic regions of the State where restoration of wetlands may better achieve State and regional goals and objectives; ~~and~~
- (2) Land that is currently enrolled in CRP in a contract that is set to expire within one year from the date of application and is farmed wetland and adjoining land that has the highest wetland functions and values and is likely to return to production after the land leaves CRP; ~~and~~
- (3) Partnerships with State, local, and non-profit organizations to enroll multiple benefit, multiple landowner, outstanding wetland wildlife complexes.

The final rule should give state conservationists the flexibility to use WLE state allocations to contribute to, or lead in development of highly productive wetland and wildlife complexes. This flexibility is especially important for wetland restoration or protection on floodplains and potholes

substantially altered by flooding. This flexibility will allow funds to be targeted to areas that can have significant outcomes.

14. Beginning Farmers and Ranchers

a) Long Term Agricultural Viability

Recommendation: Whereas the Interim Final Rule uses the terms “farm viability” and “long term viability” interchangeably, the final rule should use the single term: long-term agricultural viability. The final rule should define long-term agricultural viability as *the preservation of agricultural land to ensure its future availability for continued agricultural use; its continued capacity to be maintained as a viable farm or ranch owned and operated by working farmers or ranchers; its accessibility to beginning farmers and ranchers; and its continuing affordability for working farmers and ranchers for generations to come.*

The final rule should define long-term agricultural viability in section 1468.3. As noted above, we believe that the addition of future viability to the purpose of ACEP is a critically important revision to the program. The first step to incorporating this goal into the program should be ensuring that we all have a common understanding of its meaning. NRCS, however, has failed to clearly define this term. We strongly recommend that NRCS define this term so that all involved have a common understanding of its meaning.

Recommendation: The final rule should modify Section 1468.26(a)(1) as follows (new text is underlined, text proposed for deletion is in strikethrough): “Describe the activities which promote the long-term agricultural viability of the land ~~to~~ while meeting the purposes for which the easement was acquired;”

Agricultural land easement plans should outline the activities that will be taken to promote long-term agricultural viability, as defined above, *in addition to* outlining the activities that will be taken to promote the purposes for which the easement was acquired. Promoting long-term agricultural viability is a key purpose of ACEP, and the ALE plan should include planning to address this purpose. The IFR only requires the ALE plan to describe activities that promote long-term agricultural viability *to meet the purposes for which the easement was acquired.*

Under the current language, if an easement is acquired for purposes other than to protect agricultural production on a working farm or ranch, then the ALE plan will not have to describe the actions that will be taken to maintain the land as a working farm or ranch. We recommend a slight wording change to ensure that the ALE plan addresses both long-term agricultural viability *and* other purposes.

b) Option to Purchase at Agricultural Value (OPAV)

We commend NRCS for giving succession planning increased attention in the ACEP IFR. We strongly support its inclusion in the national ranking criteria.

Recommendation: The final rule should explicitly allow OPAV agreements to qualify as a succession plan. This should be done in the definition of succession plan (1468.3); in the national ranking criteria (see below); and in the agricultural land easement plan, which must include a description of activities that promote long-term viability (1468.26).

Recommendation: The final rule should modify 1468.22(b)(7) as follows (new language underlined): “existence of a farm or ranch succession plan or similar plan or Option to Purchase at Agriculture Value agreement established to address farm viability for future generations.”

Recommendation: The final rule should include OPAVs on the list of optional criteria for determining projects of special significance.

Succession planning is the primary means by which the IFR addresses the farm viability purpose of the program. Unfortunately, the IFR’s treatment of succession planning falls short of meeting Congressional intent regarding long-term farm viability. The report that accompanied the Senate-passed farm bill states: “The Committee expects the term ‘agricultural viability’ in the ALE purpose to clarify that eligible entities may include in their terms and conditions for conservation easements a right to purchase at the property’s agricultural use value, if the seller agrees to accept such terms and conditions.” USDA should take steps to explicitly include OPAVs in the final rule.

OPAV language provides the easement holder with the option to purchase, or assign the purchase of, the land at its agricultural value when it goes up for sale if it is not being sold to a qualified farmer or family member. In some cases, OPAV language is enforced strictly as an option, which creates a right for the holder to compel the sale of property, while in others it exists as a preemptive right, which gives the right of first refusal to the easement holder but does not allow the holder to force a sale.

Within the OPAV agreement, easement-holding entities can structure the language governing agricultural value based on, (1) the agricultural value is set at the time of the easement and adjusted for inflation plus improvements; or (2) an appraisal jointly agreed to by the land trust and landowner. Land trusts have found that OPAV restrictions keep protected farmland in the hands of farmers and in active agricultural use, providing insurance for the public’s investment in our agricultural resources.

The ACEP final rule should support easement projects that include OPAV arrangements or similar innovations that will keep the land in the hands of farmers and in production.

c) Ownership of Land

Recommendation: The final rule should modify Sections 1468.2 and 1468.20 to allow eligible entities to own land under ACEP in limited circumstances and subject to certain conditions.

We recommend that 1468.20(e) be modified as follows (new text is underlined):

1468.20(e) Ineligible land. The following land is not eligible for enrollment in ACEP–ALE:

(3) Land owned by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values including those listed in the statute under eligible land, unless:

(i) the nongovernmental organization is in compliance with Sections 1468.20(c)(2) and 1468.2(j) of this Rule;

(ii) the nongovernmental organization is in compliance with the highly erodible land and wetland conservation provisions in 7 CFR part 12; and

(iii) eligibility is necessary to enable the sale of farm or ranch land under a purchase agreement to a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, Indian tribe, or veteran farmer or rancher, as authorized by 16 U.S.C. 3844.

We recommend that the following subsection, 1468.2(j), be added:

(j) The Chief may also waive the applicability of the limitation in section 1001D(b)(2) of the Food Security Act of 1985 for an eligible entity, if:

(1) the Chief determines that the waiver is necessary to enable the sale of farm or ranch land under a purchase agreement to a beginning farmer or rancher, socially disadvantaged farmer or rancher, limited resource farmer or rancher, Indian tribe, or veteran farmer or rancher;

(2) the eligible entity will own the land temporarily.

ACEP-supported transactions can take a long time to complete. When a landowner is attempting to sell land to a new farmer as a part of the easement transaction, this process can become prohibitively long.

Allowing a land trust or other eligible entity to own the land during an ACEP-supported transaction eases this burden. The entity can purchase the land from the landowner in full, place an easement on the land, and then sell it to a new farmer. Both of the landowners meet the normal eligibility criteria and the entity only holds the land for as long as necessary to complete the transaction. While there is no difference in the end result, it separates one very long land sale into two much shorter transactions.

These changes are critical for fulfilling ACEP's program purpose to, "protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land." We believe this program purpose provides the necessary justification for these changes. As long as the land trust is promptly selling the otherwise eligible land to a qualifying landowner, we believe that these transactions are in keeping with the spirit of the law and permissible.

d) State Ranking Criteria

Recommendation: In order to advance opportunities for beginning farmers and ranchers to access farm and ranch land, the final rule should create a state ranking criterion based on the likelihood that the easement will lead directly to a farming or ranching opportunity for a beginning farmer or rancher.

There is nothing in Section 1468.22(c) of the IFR that allows states to prioritize easements that will directly support beginning farmers and ranchers. Yet, this is a key component of long-term agricultural viability, which is a purpose of the program. The land evaluation and site assessment (LESA) system mentioned in Subsection 1468.22(c)(6) is a measure of market and infrastructure access and is not a sufficient proxy for long-term agricultural viability. Therefore, a separate criterion relating to beginning farmer and rancher access should be added.

e) Cost Share and Entity Contributions for Beginning Farmers and Ranchers

Recommendation: The final rule should modify Section 1468.24 to allow up to 75 percent federal cost share when the land under an ACEP easement will transfer directly to a beginning farmer or rancher.

NRCS has an opportunity to use ACEP to shift current land conservation practices and help a new generation of farmers get started. Land is one of the most difficult obstacles to starting a farm in the United States and even conserved land is often too expensive for beginning farmers to purchase. Increasing the federal cost share to 75 percent for beginning farmers and ranchers will help advance this goal.

Recommendation: The final rule should modify Section 1468.24(b)(4)(vi)(D) as follows to allow for a reduced entity cash contribution for enrollments of incubator farms: “An education, incubator or demonstration farm or ranch focused on agricultural production and natural resource conservation;”

The National Incubator Farm Training Initiative defines a farm incubator project as “a land-based multi-grower project that provides training and technical assistance to aspiring and beginning farmers.”² Where educational and demonstration farms can help established farmers adopt new practices, incubator farms are specifically focused on helping beginning farmers overcome barriers to entry.

We appreciate your consideration of our recommendations, and we look forward to continued engagement as you finalize the ACEP rule.

Sincerely,



Ferd Hoefner
Policy Director



Greg Fogel
Senior Policy Specialist

² http://nesfp.nutrition.tufts.edu/sites/default/files/resources/nifti_toolkit_v2.pdf