

ACEP and RCPP in the 2018 Farm Bill

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What We'll Be Covering

- ACEP-ALE Changes
 - Q&A
- RCPP Changes
 - Q&A
- Next Steps in Rulemaking and Implementation
- AFT's Next Steps

Agricultural Conservation Easement Program

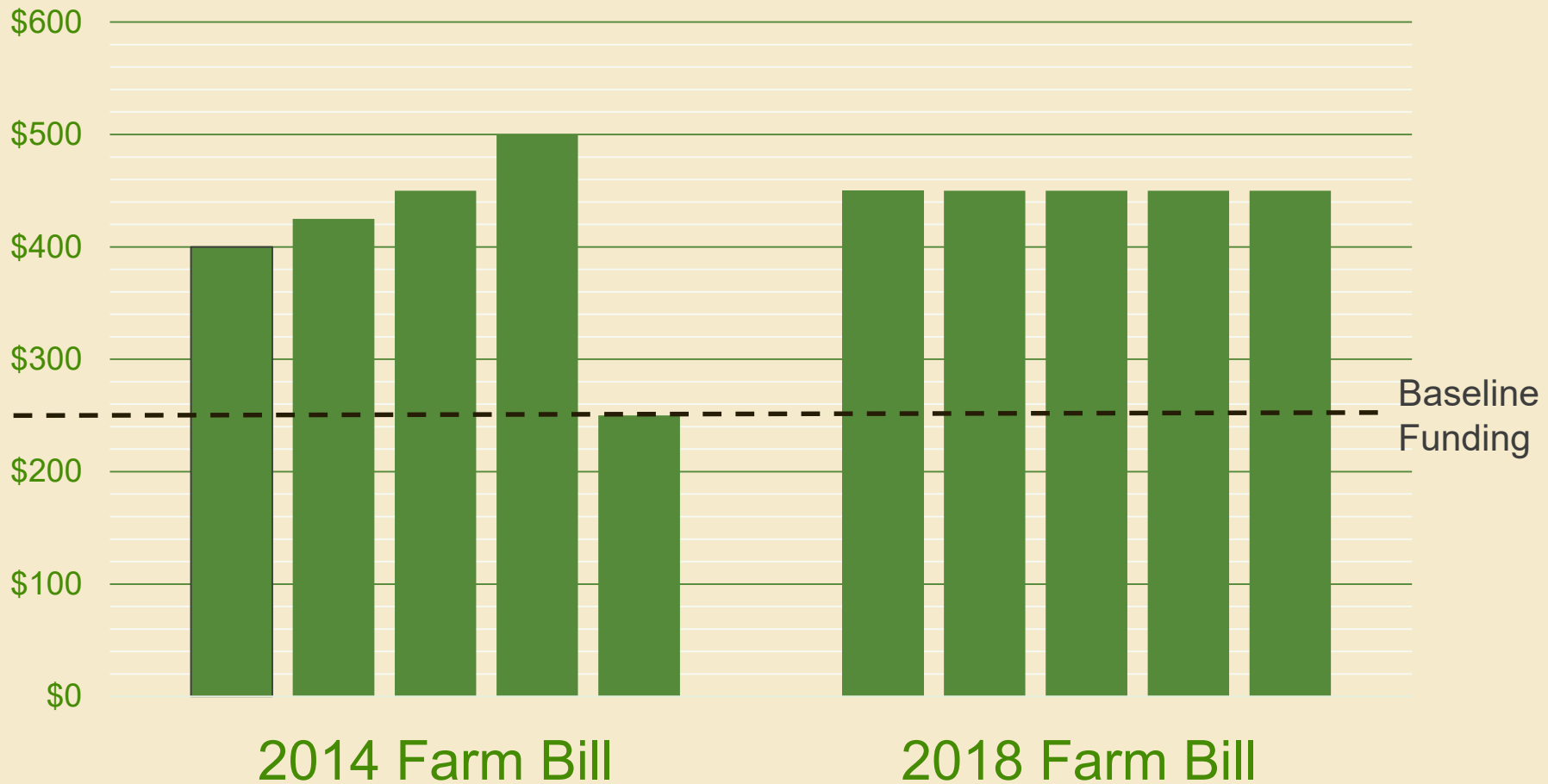
POLL

Has your organization successfully used ACEP-ALE to protect a farm or ranch?

- Yes, 5 times or fewer
- Yes, 6 times or more
- We have applied but have not been awarded funds
- Not yet, but interested in doing so
- Not applicable

Funding

ACEP Funding, in Millions of Dollars



Program Purposes

2014 Farm Bill	2018 Farm Bill
To combine FRPP, WRP, and GRP	
To restore, protect, and enhance wetlands	
To protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land	To protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land <u>that negatively affect the agricultural uses and conservation values</u>
To protect grazing uses and related conservation values by restoring and conserving eligible land	To protect grazing uses and related conservation values by restoring <u>or</u> conserving eligible land

Definitions

2014 Farm Bill	2018 Farm Bill
Agricultural Land Easement	
	<u>Buy-protect-sell transaction:</u> Entity-owned land can be (1) transferred to a farmer or rancher prior to/on acquisition, or (2) transferred up to 3 years after acquisition With stipulations for extension and repayment
Eligible Entity	
Eligible Land	
	<u>Monitoring Report:</u> A report completed by the easement holder to document compliance with terms of the easement

Availability of Assistance

2014 Farm Bill	2018 Farm Bill
Funding provided for the purchase of easements	
Funding provided for technical assistance <u>for conservation related to an agricultural land easement plan</u>	Funding provided for technical assistance <u>to implement the program, including to develop a conservation plan</u>
	Funding provided for buy-protect-sell transactions
Federal share at 50%, 25% cash match minimum required from eligible entity	Federal share at 50%, non-Federal share flexible between cash, donation, costs associated with securing a deed, other costs as determined by the Secretary
Allows grassland exception to increase federal funding level to 75% for grasslands of special environmental significance	Maintains grasslands exception

Evaluation and Ranking

2014 Farm Bill	2018 Farm Bill
Requires the Secretary to establish evaluation and ranking criteria	
Secretarial criteria to emphasize support for protecting ag uses and related conservation values, and maximizing the protection of areas devoted to agricultural use	
	Allows the Secretary to adjust established criteria to account for geographic differences
	Secretary may give priority to applications that maintain agricultural viability
Prevents bidding down	

Agreements & Minimum Terms

2014 Farm Bill	2018 Farm Bill
Agreements are for 5 years for certified entities, or 3-5 years for other entities	
<p>Entities may use their own terms and conditions so long as they:</p> <ul style="list-style-type: none">• Are consistent with program purposes• Permit effective enforcement• Include a right of enforcement for the Secretary <ul style="list-style-type: none">• Subject the land to an agricultural land easement plan that describes activities that promote viability, requires a grassland management plan, and includes a conservation plan• Include an impervious surface limit	<ul style="list-style-type: none">• Right of enforcement does not extend to a right of inspection unless the easement holder does not submit a timely monitoring report or the Secretary has a 'reasonable and articulable' belief of violation• Require a conservation plan for highly erodible cropland

Additional Permitted Terms

2014 Farm Bill	2018 Farm Bill
Not included	Allows for additional terms and conditions intended to keep the land under the ownership of a farmer or rancher
Not included	<p>Allows for subsurface mineral development, subject to applicable state law, so long as the development:</p> <ul style="list-style-type: none">• Has limited and localized impact• Does not harm the agricultural use and conservation values• Does not alter or affect the existing topography• Complies with a subsurface mineral development plan that includes a remediation plan and is approved by the Secretary prior to mineral development• Does not allow surface mining methods• Is within the impervious surface limitation• Uses technologies to limit the duration and intensity of impacts• Is reclaimed and restored
Not included	Allows for other relevant activities relating to the agricultural land easement as determined by the Secretary

Agreements with Entities, Cont.

2014 Farm Bill

Agreements shall allow substitution of qualified projects

If the agreement between the entity and Secretary is violated:

- The Secretary may terminate the agreement
- The Secretary may require a refund in full or in part, with interest

2018 Farm Bill

Certification

2014 Farm Bill

The Secretary shall establish a process to certify entities, enter into long-term agreements with them, and accept proposals for cost-share assistance for the duration of the agreement

Certification criteria requires that the eligible entity:

- Has a plan for administering easements
- Has the capacity and resources to monitor and enforce easements
- Has policies and procedures to ensure the long-term integrity of agricultural land easements, the timely completion of acquisitions, and timely and complete monitoring and reporting

2018 Farm Bill

Adds that certified entities may use their own terms and conditions so long as they are consistent with the purposes of the program

Two additional paths of certification criteria:

(1) An entity has been accredited by the Land Trust Accreditation Commission, completed at least 10 federal ag land easements, and has successfully met entity responsibilities

(2) An entity is a State agency with statutory authority, completed at least 10 federal ag land easements, and has successfully met entity responsibilities

Certification, Cont.

2014 Farm Bill	2018 Farm Bill
<p>The Secretary shall review certified entities every three years to determine continued eligibility</p>	
<p>If the Secretary finds that an entity is no longer meeting certification criteria, the Secretary may:</p> <ul style="list-style-type: none">• Allow a minimum of 180 days for the entity to take additional action• Revoke certification	

Enrollment & Technical Assistance

2014 Farm Bill

The Secretary shall enroll eligible land through permanent easements or for the maximum duration allowed under state law

The Secretary may provide technical assistance to assist in compliance with the terms and conditions of easements, and implementation of the agricultural land easement plan

2018 Farm Bill

Removes language on implementation of the agricultural land easement plan

Administration

2014 Farm Bill

The following lands are ineligible:

- Land owned by a US agency other than land held in trust for tribes
- Lands owned in fee title by a State
- Land already under an easement providing similar protection
- Lands where program purposes would be undermined by on-site or off-site conditions, including risk of hazardous substances, proposed or existing rights of way, infrastructure development, or adjacent land uses

The Secretary may give priority to land enrolled in the Conservation Reserve Program set to expire in 1 year that is:

- Grassland that would benefit from long-term protection
- Wetland or related area with the highest wetland functions and value that is likely to return to production after CRP contract expiration

2018 Farm Bill

-Amends the example to read: lands with permitted or existing rights of way

Subordination, Exchange, Modification, Termination

2014 Farm Bill	2018 Farm Bill
<p>The Secretary may subordinate, exchange, modify, or terminate an interest in land or portion of such interest if:</p> <ul style="list-style-type: none">• It is in the Federal Government's interest• The action will address a compelling public need with no practicable alternative• The action will further the administration of the program• The action will result in comparable conservation value and equivalent or greater economic value	<p>Subordination must:</p> <ul style="list-style-type: none">• Increase or have limited negative effect on conservation values• Minimally affect the acreage• Be in the public interest or further the practical administration of the program <p>Modification or Exchange must:</p> <ul style="list-style-type: none">• Have no reasonable alternative and the effect on the interest in land is avoided or minimized to the extent practicable• Result in equal or increased conservation values• Result in equal or greater economic value to the United States• Be consistent with the original intent of the easement• Be consistent with the purposes of the program• Be in the public interest or further the practical administration of the program

Subordination, Exchange, Modification, Termination

2014 Farm Bill	2018 Farm Bill
<p>...</p> <p>-The Secretary shall provide written notice to the House and Senate Agriculture Committees 90 days before taking a termination action</p> <p>-The Secretary shall work with the landowner and eligible entity on any action</p>	<p>Termination must:</p> <ul style="list-style-type: none">• Be in the interest of the Federal Government• Include full compensation to the United States for the FMV of the interest in land, any costs relating to the termination, and any damages determined appropriate by the Secretary• Address a compelling public need for with no practicable alternative even with avoidance and minimization• Further the practical administration of the program <p>-Maintains requirement for written notice for termination actions</p> <p>-The Secretary shall obtain consent from the landowner and eligible entity if applicable on any action</p>

Land Enrolled in Other Programs

2014 Farm Bill	2018 Farm Bill
The Secretary may terminate or modify a CRP contract if eligible land subject to such contract is transferred into the program	The Secretary may terminate or modify a CRP contract if eligible land subject to such contract is <u>enrolled in a WRE</u>
Land enrolled in WRP, GRP, or FRPP shall be considered enrolled in ACEP	
Not included	A farmer or rancher who owns land subject to an agricultural land easement may enter into a CRP contract

Conservation Compliance

2014 Farm Bill

The eligible entity or owner must be in compliance with conservation requirements for highly erodible lands and wetlands

2018 Farm Bill

Questions or concerns about ACEP-ALE changes?

Regional Conservation Partnership Program

POLL

Has your organization successfully used RCPP to protect a farm or ranch?

- Yes, currently participating in an RCPP project
- Yes, currently leading an RCPP project
- We have applied but have not been awarded funds through RCPP
- Not yet, but interested in doing so
- Not applicable

Contracts & Covered Programs

- Covered programs now include **CRP** and **PL-566** in addition to ACEP, EQIP, CSP, and HFRP
- Contracts will be RCPP-specific, rather than through covered programs, so covered programs determine RCPP *purposes* rather than *authorities*
- Allows for up to 5-year projects, with an optional 5-year renewal and additional 1-year extension for both original term and renewal

Funding

- Previously, RCPP was funded with 7% of covered program funds (ACEP, EQIP, CSP, HFRP) plus \$100 M per year
- Now, RCPP is funded at \$300 M per year, with no contributions from covered programs

Funding Pools

- 50% State/Multistate
- 50% Critical Conservation Area
- The limit of 8 total CCAs remains the same
- Projects within a CCA must address a priority resource concern for that area as determined by the Secretary

Grants and Alternative Funding Agreements

- Up to 15 grant agreements or alternative funding arrangements per year
- Project partners directly provide conservation services to farmers and ranchers
- Examples given for these type of projects include:
 - ✓ Infrastructure investments that would benefit multiple producers
 - ✓ Projects that use innovative approaches to leveraging federal investments, e.g. performance-based payments or environmental markets

RCPP Partners

- Calls for a simplified application process
- Clarifies that in-kind contributions are counted toward matching contribution requirements
- Clarifies work completed by partners between when a project is selected for RCPP and when the formal partnership agreement is signed with NRCS may now count towards matching funds

Other Changes in the Conservation Title

- AGI: title-wide waiver for projects of special environmental significance added
- Environmental services markets: The Secretary may not prevent participation in so long as (a) the market is not counter to the purposes of the relevant program, and (b) a purpose of the market is facilitation of additional conservation benefits

Questions or concerns about RCPP changes?

Next Steps in Rulemaking & Implementation

- Limited information about new enrollments given shutdown
- Farm Bill grants authority to operate under previous regulations for an additional fiscal year
- USDA goal to have new rules by FY20

AFT's Next Steps

- Continue to solicit input from stakeholders on priority implementation issues
- Share input with NRCS
- On release of proposed rules, convene interested stakeholders to generate feedback for comments
- AFT will draft and share comments with interested stakeholders

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Saving the Land that Sustains Us



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