



**Responses to Questions Posed on the ACEP Webinar**  
Held December 9, 2016

***Q: Can you please list which federal and state laws apply for "at-risk" species? And is there a resource people could use to find more information?***

A: Consult with state NRCS staff about what state laws would be impacted by the definition of "at-risk" species especially in their state. See also slide #10 in the presentation.

***Q: Do these changes take effect immediately (i.e., for applications submitted for FY 2017)?***

A: Yes, they took effect on October 18, 2016. So NRCS will be operating under the final rule for this entire fiscal year.

***Q: For the environmental market rule [§1468.10 of the ACEP Rule that prohibits the use of funds for court required mitigation], what if the Court order is temporary? Our ALE easement is perpetual, which means that the easement restrictions will outlast, and provide permanent protection, after the Court order time period ends.***

A: That is something NRCS would have to look at on a case by case basis. NRCS would need to look at the specifics of what the court order says and the state NRCS office would have to make a land eligibility determination at the time of application. NRCS would also have to get an evaluation from the Office of General Counsel.

***Q: Will NRCS allow substitutions for FY 2014 cooperative agreement projects even if that parcel was not on the original attachment list?***

A: FY 2014 is the exception, it is locked into amber—it was a hybrid year between FRPP and ALE so there is limited ability to change those agreements. NRCS was operating under very specific authority for 270 days provided by the Farm Bill. FY 2014 agreements exist as they were entered into at that time and changes can't really be made to them. But NRCS welcomes your substitutions in FY 2015, FY 2016 and upcoming FY 2017 applications.

***Q: Do the minimum deed terms need to be attached to the cooperative agreement, even if NRCS has approved a state-specific deed template that is used instead?***

A: If NRCS has approved a template for that cooperating entity (templates are approved on a cooperating entity by cooperating entity basis—they are not approved state-wide), then that template would be attached to the cooperative agreement once it's approved and that could be attached in the place of the minimum deed terms or could be attached in addition to the minimum deed terms—that's between the partnering organization and the State NRCS office exactly how they want to administer that. But at a minimum the template would need to be attached.

***Q: Can a substitute project be eligible and considered on more than one cooperative agreement?***

A: A single substitute parcel should only be listed on one single cooperative agreement at a time. So if you have it on a FY 2015 agreement you shouldn't have it on a FY 2016 agreement. But you also don't need to list substitute parcels on the agreements anymore.

***Q: How do certified entities know that their easement deeds meet the regulatory deed requirements? Will NRCS provide feedback on this?***

A: What a lot of entities who are seeking certification are doing is providing an ALE deed template for review in advance of seeking certification. That process is occurring before certification. This is not required but it's a great way for them to know that their eventual deed meets the program requirements once they are certified and aren't receiving the benefit of that NRCS ALE deed review process.

If they use a deed that had been approved from before they were certified and made any changes to the deed, submitting it for deed review would provide assurances that it did meet the requirements. Those who have participated in ALE are more likely to be certified and if they successfully used a deed would be more likely to need to submit one for review if changes were made.

Other points of clarification: in terms of having an entity-specific deed template approved, this is explained in the preamble, but NRCS strongly encourages that anyone who wants to pursue having an entity-specific deed template in place that that be done prior to entering into the cooperative agreement, or what you should anticipate is a longer lead and review time. They are going to be the least expedient option upfront because of the time it takes to negotiate those agreements individually. NRCS recommends you pursue those in advance of the cooperative agreement so that it is in place by the time you have a parcel approved and enter into a cooperative agreement so that you can include it as an attachment with that agreement. Once those templates are in place it will be as expedient as the standard minimum deed terms because at that time you will be using preapproved set of terms that don't have to go through the level of review that's required when there is variability of all the individual deeds.

For those non-certified entities that wind up with an entity-specific deed template—if they do later become certified, that already-approved deed template is something they can use and thus have the certainty that those terms will be acceptable to NRCS. Similarly, if an entity wants to pursue certification, but does not have an entity-specific deed template, the minimum deed terms provide a very clear indication of what would be the kind of acceptable terms that NRCS would consider to satisfy the requirements to address the regulatory deed requirements. In spite of the fact that board certified entities at NRCS will not be reviewing the individual deeds prior to closing, NRCS has provided a few paths to clearly indicate what NRCS would be looking for in terms of terms that would satisfy the regulatory deed requirements.

Once an ALE deed template is approved you will receive a letter from the Easement Programs Division Director that guarantees the approval of that ALE deed template for the remainder of that Farm Bill. So it could be used on multiple cooperative agreements over the course of that Farm Bill.

***Q: What about variations to an approved deed? How to know that the deed still meets the requirements for certified entities?***

A: A certified entity would need to evaluate that using their in-house expertise and their familiarity with the program requirements. Certified entities don't have the benefit of a second review of the deed by NRCS as it's one of the administrative efficiencies captured by the certification process. You could be using a prior approved deed or deed template or attaching minimum deed terms and using those as a guidance tool.

***Q: Is the period to cure violations under 7 CFR 1468.28(f) 180 days or 60 days in the final rule?***

A: 180 days.

***Q. For clarification on succession planning, in the context of demonstrating commitment to long-term viability, what is acceptable in the range of options and is that still being worked out?***

A: For succession plans, the final rule did not provide any additional verbiage on what NRCS has been saying in the ACEP-ALE manual. NRCS is looking at anything that provides evidence that there has been or are discussions about the future viability of the farm, anything from a formal succession plan or even an informal plan by the landowner to look at what the farming opportunities will be for the land once they are no longer the landowner. We still provide a lot of flexibility about what is acceptable in showing long-term farming viability.

The Farmland Information Center is organizing a set of modules for key audience, including NRCS staff in the State offices, but it might also be useful to others. These will be three online tutorials on Farm Succession Planning and ACEP-ALE. 1.) How farmland succession planning fits in ACEP-ALE; 2.) Talk in general terms of the process of farm succession planning—this will give program managers and NRCS State staff signs to look for that landowners or entities have taken steps in farm succession planning; 3.) A review of most frequently used and effective tools in the context of a farm succession plan. The tutorial will also cover what a farm succession plan is.

These tutorials will be made available on the Farmland Information Center website ([www.farmlandinfo.org](http://www.farmlandinfo.org)).

***Q. Is the maximum time period (i.e. up to 30 days) for each review process (appraisal review, deed review, and internal controls) included on the NRCS ACEP website, FY 2017 guidance manual, or elsewhere?***

A. Look to the cooperative agreement—that document controls the relationship between NRCS and partners. Cooperative agreements ask entities to provide those documents above (ALE

draft deed, baseline documentation report and appraisal) 90 days prior to your identified closing date. If provided 90 days prior to closing date, NRCS will work them through those review processes so they are ready to go by your closing date, but they need to get to NRCS in an approvable form. There are internal guidelines for NRCS staff to meet that NRCS expects them to satisfy under policy and those are all designed to fit within those 90 days. For example, for those who are closing in on a FY 2015 or an extended FY 2014 cooperative agreement, you should be getting those documents to your NRCS State Office no later than December 31 for that March 31 closing date mentioned in your cooperative agreement.

***Q: How long does it take on average to get an ALE plan completed when using the NRCS option?***

A: NRCS hasn't asked how long the ALE plans are taking, but NRCS knows there haven't been any situations where the ALE plan has delayed closings. The NRCS goal is to have everything ready for the closing date, and the ALE plan is one of the documents that would need to be prepared and ready for review by the entity and landowner prior to that 90 day closing.

There are a lot of variables that go into the ALE plan. If an entity selects NRCS as the drafter of that plan NRCS would have to have that conversation with the landowner to figure out what their goals are for that property and do those site visits. NRCS recommends if you are concerned by a NRCS drafted plan to contact that State Office and start working with them and make sure they've reached out to the District Conservationists or whoever will be drafting the more technical portions of the plan as soon as possible. There is from the close of the fiscal year of enrollment to the proposed closing date 18 months to close those easements under the terms of the cooperative agreement, which should be more than enough time for an ALE plan to get created. If that is a document that is of concern and you have signed up a project for FY 2016 funding then reach out to the State Office in the near future to find out what the plan is to develop that ALE plan and make sure all the parties who need to contribute to it are aware of it and are ready to participate in that process. Because it really is going to be about having a conversation with that landowner and learning what their goals are for their property so NRCS technical staff can create a document that meets the landowners' expectations.

***Q: Can an entity use the FY 2015 Minimum deed terms attachment for an FY 2014 project?***

A: May be better served by looking at FY 2016 deed terms—they may be more appealing to the land trust and the landowners. NRCS has done a lot to refine and improve and address a lot of concerns in the FY 2016, so hopefully the entity will look at the FY 2016 terms which NRCS encourages they use and may be a better fit.

***Q: Can you provide an update on the Easement Support Services Branch?***

A: Easement Support Services is a branch that NRCS created to provide additional resources to NRCS State Offices. More information is provided in the webinar at time 1:04:38.

***Q: If an ALE application is for a farm that has some land that is in permanent pasture, the rule seems to suggest that this pastureland would be considered grassland. Would this pasture***

***need to be delineated in the easement as grassland and the grassland minimum deed term language included in the easement even if the purpose of the easement is not to protect this "grassland" specifically as a grassland resource?***

A: Yes, permanent pastureland, if it's in grassland use as defined here, would need to be delineated because there will be one restriction in the minimum deed terms that it addresses grassland uses. They do not need to include all the other grassland language that's available in minimum deed terms unless they are applying for ALE as a grasslands project. But there is one deed term that will address grassland uses that would not be delineated in the deed—NRCS prefers that it be delineated in the ALE plan, and the minimum deed term would indicate that as this is something that will change over time and the ALE plan is a living document that can be changed as the uses of the property change, the resource concerns change, and the desires of the landowner change. So they would identify grasslands on the property and identify any protections for those grasslands and their related conservation values—this would also be done in the ALE plan. It's not a grassland enrollment but it has a resource that was identified as extremely important in the 2014 Farm Bill in ACEP so NRCS has to address it. One of the big changes from FRPP to ALE was an emphasis on the protection of grassland resources. Whether or not they are grassland enrollment the statute requires NRCS to provide some basic protections for grassland, grazing uses and their related conservation values.

If the project is eligible because it's eligible under the grassland eligibility criteria that is the point at which the grassland language in the minimum deed terms needs to be used. But if the land is eligible under any of the other criteria—prime and unique soils, supports state or local policy, or historical or archaeological—then provisions related to grassland are predominantly addressed in the plan and not the deed, but if it is eligible under that grasslands provision and that's how that entity has applied then that's what triggers those grassland provisions in the deed.

***Q: Would it be possible to include/invite both the NRCS State Office staff and the entities to the same on-site, regional trainings?***

A: Yes, it is possible. This first round of trainings covered all ACEP, including WRE and ALE. NRCS has discussed doing a more pared-down version covering just ALE for both internal and external audiences but have needed to finish the first round of internal training. NRCS would also modify some of the materials and answer more questions from both perspectives, and get some input from folks.

***Q: Where exactly will this powerpoint presentation and recording be posted online?***

A: American Farmland Trust's Farmland Information Center website, [www.farmlandinfo.org](http://www.farmlandinfo.org). The direct link to the webinar is here: <http://www.farmlandinfo.org/agricultural-conservation-easement-program-acep-final-rule-2016-webinar>.