

## **Part 528 – Agricultural Conservation Easement Program (ACEP)**

### **Subpart F – ACEP-ALE Cooperative Agreements and Grant Agreements**

#### **528.50 Overview of ACEP-ALE Agreements**

##### **A. Background**

- (1) NRCS may use the following agreement types to implement ACEP-ALE:
  - (i) An ACEP-ALE cooperative agreement with any type of eligible entity
  - (ii) An ACEP-ALE grant agreement with certified eligible entities only
  - (iii) An ACEP-ALE program agreement with any type of eligible entity and as authorized by the Deputy Chief for Programs
- (2) The above-listed agreement types are hereinafter referred to as an “ALE-agreement” and guidance referring to ALE-agreements applies to all ALE-agreement types, unless otherwise specified. NRCS, on behalf of the Commodity Credit Corporation (CCC), enters into an ALE-agreement for eligible entities to acquire agricultural land easements on eligible parcels selected for funding.
- (3) The ALE-agreement is the principal program document used to establish how NRCS and an eligible entity will coordinate the activities needed for the eligible entity to purchase an agricultural land easement with ACEP-ALE cost-share assistance. The ALE-agreement identifies each party’s respective rights, requirements, roles, and responsibilities, and addresses the provision of Federal ACEP-ALE cost-share assistance as follows:
  - (i) ACEP-ALE cooperative and grant agreements are the legal agreements with which the Federal Government establishes a financial assistance relationship with an eligible entity, including the obligation and payment of ACEP-ALE cost-share assistance.
  - (ii) ACEP-ALE program agreements establish the framework under which NRCS and an eligible entity will operate and identifies the potential co-holder and third-party right holders that may be party to the acquisition of any ACEP-ALE easement associated with the ACEP-ALE program agreement. ACEP-ALE funds are not obligated to an ACEP-ALE program agreement, instead the obligation and payment of cost-share assistance occurs on an individual parcel basis through execution of individual ACEP-ALE cost-share contracts that are associated with the ACEP-ALE program agreement and are entered into by NRCS, the eligible entity, and any co-holders specific to the individual parcel.

##### **B. ACEP-ALE Cooperative Agreements**

- (1) Each fiscal year, NRCS National Headquarters (NHQ) publishes the standard ACEP-ALE cooperative agreement template for use in that fiscal year. For all new cooperative agreements entered into in a given fiscal year, the State conservationist will use cooperative agreement template published for that fiscal year.
- (2) Any eligible entity type, irrespective of their certification status, may elect to enter into a standard ACEP-ALE cooperative agreement, and agrees through its execution of the ACEP-ALE cooperative agreement to comply with the standard terms and conditions of such agreement.
- (3) If a certified eligible entity elects to enter into an ACEP-ALE cooperative agreement rather than an ACEP-ALE grant agreement, the certified eligible entity may not request changes to the cooperative agreement to incorporate terms and conditions

otherwise available under an ACEP-ALE grant agreement. The certified entity is subject to the standard submission and review requirements pursuant to the terms and conditions of the standard ACEP-ALE cooperative agreement.

**Note:** The Easement Programs Division (EPD) will maintain a national list of certified and decertified entities that each State office must check prior to entering into an ALE-agreement.

- (4) The EPD director may approve limited changes to the terms of an ACEP-ALE cooperative agreement template, as follows:
  - (i) The eligible entity may submit a request for a revision to the cooperative agreement template to the State conservationist for revisions that may facilitate an eligible entity's need to meet non-NRCS requirements to which the eligible entity may be subject. For example, if the eligible entity is a State and Tribal Government, and local government with statutory authorities that conflict with specific terms of the cooperative agreement template.
  - (ii) If the State conservationist supports the requested revision they will forward the proposed amended cooperative agreement to the EPD director with a copy to the FPAC-BC Grants and Agreements Division (GAD) director for review and determination.
  - (iii) EPD director and the FPAC-BC GAD director will determine if the revisions are consistent with ACEP-ALE authorities and policy and Title 120, General Manual (GM), Part 401. EPD will consult with the USDA Office of General Counsel as needed to determine the consistency of the revisions with the statutory or regulatory authorities of ACEP-ALE.
  - (iv) State conservationists must receive written approval from EPD director authorizing the specific revisions to the cooperative agreement template. Prior to executing a cooperative agreement containing revisions approved by the EPD director, the State conservationist must also have a written delegation of authority letter from the regional conservationist specific to the individual cooperative agreement.
- (5) The published cooperative agreement template and any approved revisions thereto provide the needed flexibility to meet program purposes and goals at the State or local level while satisfying all ACEP-ALE program requirements.

#### C. ACEP-ALE Grant Agreements

- (1) ACEP-ALE grant agreements may only be used by certified eligible entities. The ACEP-ALE grant agreement published by NHQ must be used as written, revisions to the grant agreement are not authorized. The grant agreement is inherently more flexible and contains fewer specific terms than the cooperative agreement.
- (2) Acceptance of the grant agreement as published by NHQ is a condition of certification and eligible entities must affirm their ability and willingness to use the published grant agreement at the time certification is requested.

#### D. ACEP-ALE Program Agreements:

- (1) For ACEP-ALE program agreements, States must have written authorization from the Deputy Chief for Programs prior to use of this agreement type. Upon receiving such authorization, a template ACEP-ALE program agreement will be provided by NHQ to States for their use along with the applicable program agreement guidance.
- (2) The terms of the template ACEP-ALE program agreement make it applicable for use by noncertified or certified eligible entities and cannot be modified. Authorization to use an ACEP-ALE program agreement is limited to those eligible entities that agree

to operate under the terms of the program agreement as written. For eligible entities provided the option to enter into an ACEP-ALE program agreement that are unable to agree to the terms of such agreement, the ACEP-ALE cooperative agreement and grant agreement options, as applicable, remain available to such eligible entities.

E. Required Provisions for All ALE-Agreement Types.—ALE-agreements must contain the provisions necessary to ensure the ACEP-ALE program purposes and requirements are met and the ALE-agreement is implemented in compliance with NRCS authorities. The specific terms of these required provisions are included in the standard ALE-agreement templates published by NHQ. Required provisions of the ALE-agreements include, but are not limited to—

- (1) Identification of the parties to the agreement, including the eligible entity.
- (2) The interests in land to be acquired, including the United States' right of enforcement, the ACEP-ALE regulatory deed requirements that must be addressed in the conservation easement deed, and other terms and conditions of the easement deed. This is done either through the use or incorporation of the ACEP-ALE minimum deed terms, or for certified eligible entities operating under a grant agreement or the certified entity provisions of a program agreement, through a conservation easement deed that the certified entity is responsible to ensure addresses the ACEP-ALE regulatory deed requirements.

**Note:** The conservation easement deeds are subject to the regulatory deed requirements in place during the Farm Bill under which the ALE-agreement was originally executed.

- (3) The administration, management, and enforcement of the rights on easements acquired with ACEP-ALE funds by the eligible entity or its successors or assigns.
- (4) The responsibilities of NRCS.
- (5) The responsibilities of the eligible entity on easements acquired with ACEP-ALE funds.
- (6) Identification and responsibilities of any other eligible entities other than the primary eligible entity, or other legal entities that may be co-holders or third-party right holders and may be party to the agricultural land easement, the ALE-agreement, or as applicable, associated ACEP-ALE cost-share contracts.
- (7) The requirements related to the development and approval of agricultural land easement plans, including highly erodible land (HEL) conservation plans, as follows:
  - (i) For all ACEP-ALE enrollments, for each parcel that contains highly erodible cropland to have an HEL conservation plan provided by NRCS prior to closing, and
  - (ii) For 2018 Farm Bill enrollments, as agreed-to by the eligible entity as a condition of ranking and selection, the requirement for an agricultural land easement plan provided by the eligible entity (see subpart G, section 528.63C of this part).
  - (iii) For 2014 Farm Bill enrollments, all ALE-agreements must include the requirement that each parcel must have an agricultural land easement plan that is approved by NRCS State conservationist and signed by the landowner and the eligible entity (see subpart G, section 528.63B of this part).
- (8) The allowance of eligible parcel substitution upon mutual agreement of the NRCS State conservationist and the eligible entity.
- (9) The certification by the landowner prior to the planned easement closing date of the extent of any charitable contribution or other donation the landowner has provided to the eligible entity.

- (10) The requirement for the entity to provide a breakdown of the amounts of each of the permitted sources that comprise the non-Federal share provided by the eligible entity.  

For 2018 Farm Bill enrollments, this includes the requirement for the submission of supporting documentation for the procured costs paid to a third-party for the items that may be included in the non-Federal share calculation, when such costs are relied upon by the eligible entity to meet the non-Federal share requirement.
- (11) The length, expiration date, and process for extension or amendment of the ALE-agreement.
- (12) Standard provisions or required information related to ALE-agreements, including provisions requiring the eligible entity to comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282, as amended) and as applicable, 2 CFR Parts 25 and 170, related Executive orders, and Office of Management and Budget circulars.
- (13) Reporting requirements.
- (14) For ACEP-ALE cooperative and grant agreements only.—An attachment with the list of all parcels selected for funding and all substitute parcels identified at the time the ALE-agreement is executed, including the following information for each parcel:
  - (i) The ACEP-ALE parcel ID
  - (ii) The landowner’s names
  - (iii) Estimated acres
  - (iv) Estimated fair market value of the agricultural land easement
  - (v) Estimated eligible entity cash contribution information
  - (vi) Estimated ACEP-ALE Federal share
- (15) For ACEP-ALE program agreements only.—Attachments to the agreement at the time of agreement execution will include the following:
  - (i) The list of eligible entities that are party to the agreement
  - (ii) The list of co-holders that are party to the agreement and may be identified as a co-holder (grantee) of an agricultural land easement acquired pursuant to the ACEP-ALE program agreement
  - (iii) The list of third-party right holders, identified at the time of agreement execution that may be identified as a holder of third-party rights or interests (not a grantee) in an agricultural land easement acquired pursuant to the ACEP-ALE program agreement
  - (iv) Additional ACEP-ALE program agreement provisions agreed to by NRCS and the eligible entity
  - (v) Template ACEP-ALE cost-share contract documents that will be used for individual parcel contracts
- (16) For buy-protect-sell transactions the ALE-agreement will also include the requirements identified in the buy-protect-sell supplemental guidance.
- (17) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

## **528.51 ACEP-ALE Cooperative and Grant Agreements: Fund Obligation and Adjustments**

### **A. Overview**

- (1) At the time of application, the entity provides a breakdown of the estimated fair market value of the agricultural land easement, the purchase price, the amounts and composition of the non-Federal share, and the requested Federal share for each

individual parcel. The Federal share may not exceed 50 percent of the appraised fair market value of the agricultural land easement except in the case of grassland of special environmental significance, in which case the Federal share may not exceed 75 percent of the appraised fair market value of the agricultural land easement.

- (2) After eligibility determinations and ranking have been completed, the State conservationist tentatively selects parcels for funding. The parcels tentatively selected for funding and the estimated Federal share amount for each parcel are listed in an attachment to the ALE-agreement. Eligible, high-ranking, unfunded substitute parcels may also be identified on the attachment at this time.
- (3) The ACEP-ALE cooperative or grant agreement is the document used to obligate the ACEP funds that may be provided to the eligible entity for the purchase of agricultural land easements. The amount of ACEP funds obligated is based on the cumulative total of the estimated Federal share of the tentatively selected parcels listed on the attachment to the agreement. There is only one attachment for a fiscal year.
- (4) If the terms of the ACEP-ALE cooperative or grant agreement allow for amendments to add a new attachment to add funds in subsequent fiscal years for additional parcels selected for funding, a new attachment is developed for that fiscal year and an amendment to the agreement executed to add new funds and parcels prior to the obligation deadlines for the given fiscal year. The new attachment and the amendment to the ACEP-ALE cooperative or grant agreement are used to obligate the funds in the subsequent fiscal year.

**Note:** Fiscal year-specific program guidance will identify whether ALE-agreements entered into in that fiscal year may include terms authorizing amendments to add new attachments for subsequent fiscal year funding or parcels. At a minimum, subsequent fiscal year attachments to add new parcels are not authorized for ALE-agreements executed in fiscal years 2014 and 2019. Additionally, as of the date of enactment of the 2018 Farm Bill, all ALE-agreements entered into under the 2014 Farm Bill, may not be amended to add new attachments for new parcels or funding.

- (5) The estimated Federal share for the individual parcel tentatively selected for funding as identified on the attachment, represents the maximum amount of ACEP funds that may be provided to the eligible entity for the purchase of that individual agricultural land easement.
- (6) Once an individual parcel has an approved fair market value of the agricultural land easement the State conservationist must determine whether to adjust the Federal share amount for the individual parcel as follows:
  - (i) If the final approved fair market value of the agricultural land easement is lower than the originally estimated amount or other changes result in non-Federal share contributions below required levels, the Federal share for the parcel must be decreased as needed to ensure that no more than the maximum allowable ACEP-ALE cost-share amount is provided for the individual parcel. The ACEP-ALE funds that become available as a result of a decrease in the Federal share remain available for use under that ACEP-ALE cooperative or grant agreement attachment.
  - (ii) If the final approved fair market value of the agricultural land easement and non-Federal share provided by the eligible entity supports a Federal share amount that is higher than the original estimate, the State conservationist has discretion to increase the amount of the Federal share for the individual parcel up to the maximum allowable ACEP-ALE cost-share amount. Pursuant to the terms of the ALE-agreement, NRCS is under no obligation to increase the Federal share

above the original estimated amount. The State conservationist may only authorize an increase in the Federal share amount for an individual parcel that is within the scope of the original ACEP-ALE cooperative or grant agreement and if there are sufficient funds remaining available in the attachment on which the parcel is listed.

- (iii) If there is a change to a parcel selected for funding that is outside the scope of the original ACEP-ALE cooperative or grant agreement, a separate determination of funding must be made before acquisition of the agricultural land easement may continue on that parcel under the same ACEP-ALE cooperative or grant agreement or attachment thereto. Out-of-scope changes typically include changes in the land offered for enrollment after the ACEP-ALE cooperative or grant agreement is executed or after the appraisal is completed, including acreage substitutions, additions, or deletions, affecting more than 10 percent of the original acreage. Depending on the timing and circumstances of the out-of-scope changes, the parcel may need to be reranked, reappraised, and have updated eligibility determinations made.
- (7) The State conservationist is responsible for managing the ACEP funds obligated to the ACEP-ALE cooperative or grant agreement. Once funds are obligated to the ACEP-ALE cooperative or grant agreement or attachment thereto, the number of parcels ultimately funded and any subsequent increases or decreases in the Federal share amounts for the individual parcels must be managed within the funds obligated to that agreement within each attachment. Additional ACEP-ALE funds will not be obligated for increases in the Federal share amounts for individual parcels as long as funds remain available in the attachment on which the parcel is listed.

#### B. Obligation of Funds Through the Agreement

- (1) Prior to the execution of an ACEP-ALE cooperative or grant agreement or an amendment to an existing agreement to increase the obligation of funds, the State conservationist, and Easement Acquisition Branch (EAB) if applicable, must ensure all necessary reviews and authorizations are in place. Therefore, the following actions must occur for all new ACEP-ALE cooperative and grant agreements and amendments to such existing agreements to increase the obligation of funds through subsequent year attachments:
- (i) They must be submitted to FPAC-BC GAD for review and approval in accordance with applicable FPAC-BC GAD policy and procedure, including any fiscal year-specific guidance, must receive a Notice of Award (NOA) from FPAC-BC GAD, and must comply with applicable delegation of authority requirements.
  - (ii) They must have a first- and second-level preobligation internal controls review completed pursuant to the most current easement internal controls policy in National Instruction 300-300, “Instruction and Guidance for State Implementation of Easement Internal Controls Prior to Obligation, Payment, and Closing,” and applicable updates.
  - (iii) Additionally, those ACEP-ALE cooperative or grant agreements or amendments that exceed the State’s identified threshold or meet other submission criteria for national-level internal controls review under the most current easement internal controls policy must be submitted for national-level internal controls review. National-level preobligation internal control reviews may take up to 30 days after all required materials are submitted.
- (2) After all required reviews are conducted and the State conservationist receives required approvals and delegations of authority, the ACEP-ALE cooperative or grant

agreement or amendment thereto will be sent to the eligible entity for signature. After the eligible entity executes the required documents, the State conservationist, on behalf of the CCC, executes the required documents. Following execution of the ALE-agreement documents by the required parties, ACEP funds will be obligated in Financial Management Modernization Initiative (FMMI) and within 10 business days of obligation NRCS will promote the agreement and associated parcels in easement business tool (e.g., NEST).

- (i) The fully executed ACEP-ALE cooperative or grant agreement, including the fully executed Notice of Award, is the document that authorizes NRCS to obligate ACEP-ALE funds for the eligible entities to purchase agricultural land easements from eligible landowners on eligible parcels selected for funding.
- (ii) Funds obligated in a given fiscal year to the ACEP-ALE cooperative or grant agreement may be expended over multiple years in accordance with the terms and deadlines identified in the agreement.
- (iii) If the terms of the ACEP-ALE cooperative or grant agreement allow for amendments to add funds and parcels in subsequent fiscal years, the subsequent fiscal year's selected eligible parcels will be identified on a new attachment to the agreement. There is no guarantee of funding for additional parcels in subsequent fiscal years.

C. Parcels Listed in Attachments to the ACEP-ALE Cooperative or Grant Agreement

- (1) An individual attachment to the ACEP-ALE cooperative or grant agreement lists the parcels that are intended to be acquired with the funds obligated in that fiscal year. In addition, the attachment may list substitute eligible parcels.
- (2) The terms of the ACEP-ALE cooperative or grant agreement provide that nothing in the agreement obligates NRCS or the entity to purchase all or any of the agricultural land easement parcels listed on the attachment. Listing parcels on the ACEP-ALE cooperative or grant agreement attachment and obligation of funds often occurs prior to the completion of due diligence investigations, appraisals and reviews, and title clearance.
- (3) Due to changing circumstances, including but not limited to landowner withdrawal, insufficient funds, unapproved appraised values, inability to provide clear title or sufficient access, hazardous materials issues, or expiration of offers, parcels originally selected for funding may ultimately not be funded or may be removed from the attachment. If sufficient funds remain available in the ACEP-ALE cooperative or grant agreement attachment, eligible parcels listed as substitutes on that attachment may be identified as selected for funding or new eligible parcels not listed as substitutes may be added through an amendment to the ALE-agreement and selected for funding. Substitute parcels may be selected for funding as long as the substitute parcel as configured at the time it is selected for funding:
  - (i) Is replacing a parcel previously selected for funding;
  - (ii) Is owned by landowners that meet the ACEP-ALE landowner eligibility criteria in the fiscal year the parcel is selected for funding;
  - (iii) Meets ACEP-ALE land eligibility criteria;
  - (iv) Can be purchased with the existing funds obligated in the ACEP-ALE cooperative or grant agreement attachment under which the parcel will be funded;
  - (v) Provides an equivalent or greater conservation value than the deleted parcel;
  - (vi) Is the highest-ranked unfunded parcel of the available substitute parcels offered under the agreement; and

- (vii) Ranks high enough to be selected for funding in the fiscal year in which it is added to the ALE-agreement, unless there are changes to the offered parcel that require the reconfigured parcel to be reranked (see paragraph (5) below).
  - (4) If a parcel is listed as selected for funding on an ALE-agreement attachment, it must not be listed as a funded or substitute parcel on any other ALE-agreements.
  - (5) The substitution of acres within a pending offer must not decrease the conservation value of the offered easement or the value of the parcel in meeting the program purposes. If the substitution of the acres affects more than 10 percent of the originally offered area, the parcel must be reranked using the most current ALE ranking criteria and factors. The reconfigured parcel must rank high enough to be selected for funding in the fiscal year in which it is reranked. If lands of lesser fair market value are substituted in the pending offer, the Federal share amount must be reduced as needed according to a new appraisal.
- D. Documenting Landowner Changes After Enrollment and Prior to Easement Acquisition
- (1) Preacquisition: Transfer or Sale of Parcel Prior to Closing the Agricultural Land Easement
    - (i) Any parcel identified as selected for funding on an active, unexpired ALE-agreement attachment that is sold or transferred by any or all of the landowners of record (including the current landowner entering into a contract to sell the land subject to the written pending offer from the eligible entity or the death of the original landowner) prior to the easement being perfected except as part of an approved buy-protect-sell transaction will result in the parcel being removed from the ACEP-ALE cooperative or grant agreement attachment unless the new landowner meets the eligibility requirements in subpart D, section 528.35 of this part, subject to the timing requirements in this section and is willing to accept the terms and conditions of the enrollment and the eligible entity is willing to provide and execute the documents necessary to identify the new landowner on a memorandum to the ACEP-ALE cooperative or grant agreement (see subpart U of this part for sample memorandum to the ACEP-ALE cooperative or grant agreement to document preclosing landowner changes).
    - (ii) Before the memorandum to ACEP-ALE cooperative or grant agreement may be completed to identify the new landowners of the parcel, the new landowners must submit a new parcel application (NRCS-CPA-41A, or successor form) and all required ownership and eligibility documentation, must be determined eligible, and must have current records with the Farm Service Agency (FSA) (see subpart D, section 528.35 of this part for additional detail). Additionally, the eligible entity must provide NRCS a written pending offer that is valid for the new landowner.
    - (iii) The new landowner must be eligible for the fiscal year in which the memorandum to the ACEP-ALE cooperative or grant agreement will be signed by the State conservationist to identify the new landowner of the parcel. NRCS will only sign the memorandum to identify the new landowners after all landowners have been determined eligible.
    - (iv) After the memorandum is signed by NRCS and the eligible entity, the landowner identification and ownership shares in the applicable business tools (e.g. NEST, FMMI) must be updated to reflect the actual ownership and ownership shares based on the most current evidence of land ownership. If adjustments in FMMI are necessary based on the change, then as soon as possible after signing the memorandum, a copy must be provided to the appropriate financial specialist to make the adjustments in FMMI.



- (v) A copy of the fully executed ACEP-ALE cooperative or grant agreement including any memoranda identifying new landowners must be included in the preclosing and prepayment internal control review documents packages.
- (vi) If the new landowner is unwilling or unable to execute the parcel application (NRCS-CPA-41A, “Parcel Sheet for Entity Application for an ALE Agreement,” or successor form) or is unable to establish eligibility for the fiscal year in which the transfer memorandum will be signed by the State conservationist and filed with the ALE-agreement, or if the eligible entity is unwilling or unable to provide a valid written pending offer, the eligible entity will be notified that the ACEP-ALE cooperative or grant agreement must be amended to remove the parcel. The notification should also provide the eligible entity an opportunity to identify a substitute parcel to be selected for funding as described in paragraph C above. NRCS will provide the eligible entity an amendment to execute the necessary changes to the ACEP-ALE cooperative or grant agreement attachment based on the entity response to the notification (see subpart U of this part for a template letter for notification of ACEP-ALE cooperative or grant agreement amendment for landowner changes).
- (vii) For 2014 Farm Bill Only
  - An ACEP-ALE cooperative or grant agreement executed under the 2014 Farm Bill does not have to be amended when the land is sold to the identified prospective owner prior to easement closure as part of an approved buy-sell-protect scenario provided that all buy-sell-protect requirements were met at the time the parcel was identified on the attachment, including that the prospective landowner—
    - Submitted an NRCS-CPA-41A at the original time of application.
    - Was determined eligible for the fiscal year the parcel was originally identified as selected for funding.
    - Was identified on the ACEP-ALE cooperative or grant agreement attachment at that time.
  - If prior to easement closure there is a change in the landownership to someone other than the prospective owner identified at the time of enrollment, the procedures described in steps (i) through (vi) of this section must be followed.

**Note:** Buy-sell-protect transactions under the 2014 Farm Bill are distinct from buy-protect-sell transactions authorized under the 2018 Farm Bill. Therefore, buy-sell-protect transactions as permitted under the 2014 Farm Bill are limited to those parcels listed as selected for funding or substitute parcels on ALE-agreement attachments that were fully executed prior to the date of enactment of the 2018 Farm Bill.

- (viii) For 2018 Farm Bill Enrollments Only

For individual parcels that are subject to an approved buy-protect-sell transaction, the procedures for determining and documenting landowner eligibility over the course of the transaction are set forth in specific guidance for buy-protect-sell transactions provided to States with such approved transactions.

- (2) Preacquisition.—Corrections to Landowners Identified on an Active ACEP-ALE Cooperative or Grant Agreement
  - (i) If any landowners that held a fee or title interest in the subject parcel at the time it was identified as selected for funding on the ACEP-ALE cooperative or grant agreement attachment were not correctly or accurately identified and as a result

did not have appropriate landowner eligibility determinations completed, eligibility determinations must be made for these landowners, and a memorandum to the ACEP-ALE cooperative or grant agreement attachment must be filed. This requirement only applies to landowners that held and have continued to hold the same fee or title interest in the subject parcel at all times since the was parcel identified as selected for funding. (See subpart U of this part for sample memorandum to the ACEP-ALE cooperative or grant agreement to document preclosing landowner changes.)

- (ii) Before the memorandum may be completed to correctly and accurately identify the landowners of the subject parcel, any newly or differently identified landowners must submit a parcel application (NRCS-CPA-41A, or successor form) and all required ownership and eligibility documentation. All landowners must meet the eligibility requirements in subpart D, section 528.35 of this part, must have their FSA records up to date, and be determined eligible for the fiscal year the parcel was originally identified as selected for funding on the ACEP-ALE cooperative or grant agreement attachment.
  - (iii) After the memorandum is signed by the State conservationist and the eligible entity, the landowner identification and ownership shares in the applicable business tools (e.g., NEST, FMMI) must be updated to reflect the actual ownership and ownership shares based on the most current evidence of land ownership. If adjustments in FMMI are necessary based on the change, then as soon as possible after signing of the memorandum, a copy must be provided to the appropriate financial specialist to make the adjustments in FMMI.
  - (iv) A copy of the fully executed ACEP-ALE cooperative or grant agreement, including any memoranda to correct identified landowners, must be included in the preclosing and prepayment internal control review documents packages.
  - (v) If all of the required landowners are unwilling or unable to execute the parcel application (NRCS-CPA-41A, or successor form) or establish eligibility for the fiscal year the parcel was originally identified as selected for funding, the eligible entity will be notified that the ACEP-ALE cooperative or grant agreement must be amended to remove the parcel. The notification should also provide the eligible entity an opportunity to identify a substitute parcel to be selected for funding as described in paragraph C above. NRCS will provide the eligible entity an amendment to execute the necessary changes to the ACEP-ALE cooperative or grant agreement attachment based on the entity response to the notification. (See subpart U of this part for a template letter for notification of ACEP-ALE cooperative or grant agreement amendment for landowner changes.)
- (3) Preacquisition: Changes in Composition of a Landowner-legal Entity Under an Active ACEP-ALE Cooperative or Grant Agreement
- (i) For a parcel owned by a landowner that is a legal entity or general partnership and identified as selected for funding on an active, unexpired ACEP-ALE cooperative or grant agreement attachment the landowner-legal entity and any required members must meet the landowner eligibility requirements outlined in subpart D of this part (see section 528.35 for additional detail). The AGI determination, including any approved AGI waivers, for the landowner-legal entity made at the time the parcel is identified as selected for funding on the attachment remains in effect for the duration of the enrollment unless there is a change in the membership of the landowner-legal entity. The HEL/wetland conservation (WC) eligibility is determined at the time of enrollment and again at the time of each payment.

- (ii) Changes in the membership of a landowner-legal entity must be documented by the landowner-legal entity submitting a revised Form CCC-901 or CCC-902E to FSA. The terms of the Form CCC-901 or CCC-902E require the landowner-legal entity to provide timely written notification to FSA of any changes in the information provided on the Form CCC-901 or CCC-902E, including changes in the composition of the entity.
  - (iii) Prior to payment, NRCS must check the most current Form CCC-901 or CCC-902E on file with FSA to determine if there has been a change in entity membership since the time of enrollment. If there has been a change in the entity membership since the time of enrollment, the landowner-legal entity and any new members must meet the eligibility requirements in subpart D, section 528.35 of this part, for the fiscal year in which the Federal share will be provided to the eligible entity for the purchase of the ALE. The eligibility for the landowner-legal entity and any new members must be determined to confirm that the landowner-legal entity is still eligible and whether any commensurate reductions for AGI must be applied to the Federal share provided by NRCS. If a landowner-legal entity has an existing AGI waiver and the only change is to the landowner-legal entity membership, and FSA determines the landowner-legal entity includes members that do not meet the AGI provisions, the existing AGI waiver can be used. If a landowner-legal entity, including all required members, met the AGI limitation at the time of enrollment but due to changes in its entity membership is subsequently determined by FSA to not meet the AGI provisions, such landowner-legal entity may request an AGI waiver at the time the revised AGI determination is made (see subpart D, section 528.35 of this part). HEL/WC will be rechecked for the landowner-entity for each fiscal year in which a payment is to be made.
  - (iv) If based on this review the landowner-legal entity is determined to be eligible, including those granted an AGI waiver, it is not necessary to amend the ACEP-ALE cooperative or grant agreement if only the membership of the landowner-entity has changed.
- (4) For each scenario described in paragraphs (1) through (3) above, if the landowner is a legal entity or general partnership, NRCS will notify the eligible entity if the applicable AGI eligibility determination requires a commensurate reduction to the Federal share, unless a waiver of the AGI limitation is requested by the landowner-legal entity and granted by NRCS (see subpart D, section 528.35B of this part).
- (5) If the specific circumstances of a landowner change after enrollment are outside of the scenarios identified in this section, States must contact EPD for guidance on whether the change can be made and how it must be documented.
- E. ACEP-ALE Cooperative and Grant Agreement Lengths, Deadlines, and Extensions
- (1) Subject to the terms of expiration and extension specified in the NHQ-approved ALE-agreement itself:
    - (i) The initial term of an ACEP-ALE cooperative agreement may be up to 3 fiscal years following the fiscal year the agreement is executed by all parties, with the possibility of two consecutive 12-month extensions for a maximum total term of 5 fiscal years following the fiscal year the agreement is executed by all parties.
    - (ii) The initial term of an ACEP-ALE grant agreement with a certified eligible entity may be up to 5 fiscal years following the fiscal year the grant agreement is executed by all parties, with the possibility of extensions for a maximum total term of 7 fiscal years following the fiscal year the agreement is executed by all parties.

- (2) Each attachment to the ACEP-ALE cooperative or grant agreement is subject to the same expiration dates as the agreement itself.
- (3) The standard expiration date for ACEP-ALE cooperative or grant agreements and associated attachments is August 31 of the applicable year, unless otherwise approved by NHQ. To request an extension of the agreement, including associated attachments, eligible entities must submit a request in writing to the State conservationist.
  - (i) Extensions requested to provide additional time to close easements on parcels that have been identified as selected for funding since the initial execution of the agreement should only be granted when delays are due to circumstances beyond the control of the entity.

**Note:** Authorizing agreement extensions may result in the reduced closing efficiency of the eligible entity. Closing efficiency is a consideration in ranking parcel applications submitted by the eligible entity as well as in an eligible entity request for certification.
  - (ii) Extending an agreement requires an amendment to the ACEP-ALE cooperative or grant agreement and any such amendment must be executed prior to expiration of the agreement.
  - (iii) Eligible entities must submit their request for an extension of an ACEP-ALE cooperative or grant agreement at least 60 days in advance of the expiration date.
  - (iv) A copy of each amendment must be uploaded into the applicable business tools (e.g., NEST).
  - (v) Agreements or attachments that are expired may not be extended under any circumstances.
- (4) Subject to required approvals from FPAC-BC GAD, amendments to extend ACEP-ALE cooperative or grant agreements may only be approved and executed by the State conservationist, this authority may not be further delegated.
- (5) Funds in ALE-agreements or attachments that are not disbursed before the ALE-agreement or attachment expires will be deobligated and returned to NHQ.

**Note:** ALE-agreements executed under the 2014 Farm Bill remain subject to the performance deadlines, expiration dates, attachment and extension provisions identified in the terms and conditions of the individual ALE-agreement.

## **528.52 ACEP-ALE Program Agreements and ACEP-ALE Cost-Share Contracts: Fund Obligation and Adjustments**

Reserved

## **528.53 Determining Fair Market Value of the Agricultural Land Easement**

### **A. General**

- (1) The Federal share must not exceed 50 percent of the fair market value of the agricultural land easement, as determined using any of the following and as approved by NRCS:
  - (i) An appraisal using the Uniform Standards of Professional Appraisal Practices (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or “Yellow Book”)
  - (ii) An areawide market analysis or survey
  - (iii) Another industry-approved method approved by NRCS

- (2) For parcels selected for funding, the eligible entity is responsible for obtaining and providing NRCS with an acceptable determination of the fair market value of the agricultural land easements that conforms to applicable industry standards and NRCS specifications and meets NRCS appraisal policy, including the requirements found in this part and in 440- Conservation Programs Manual (CPM), Part 527, Subparts E and F.
- (3) The eligible entity is approved to use either the USPAP or UASFLA appraisal methodologies. If the eligible entity requests to use an areawide market analysis or other industry-approved method, NRCS approval of the methodology is required prior to entering into the ALE-agreement.
- (4) NRCS will review, for quality assurance purposes, appraisals, areawide market analysis, valuation reports, other information resulting from another industry-approved method approved for use by NRCS and associated technical reviews.
- (5) Agency-approved appraisal reports and technical appraisal reviews must be retained in the individual easement case file. Electronic versions may be stored in lieu of the hardcopies. The easement business tool (e.g., NEST or successor system) should be used as the electronic storage location for the appraisal and technical review documents. The individual NRCS State office hardcopy easement file must identify the electronic location of the valuation documents for that easement.

B. Fair Market Value of the Agricultural Land Easement Using Individual Appraisals

- (1) If the value of the easement is determined using an appraisal, the appraisal must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser (see 440-CPM-527, Subparts E and F).
- (2) The effective date of the appraised value must be within 6 months before or after the date the ALE-agreement or applicable amendment, memorandum, or attachment thereto is executed by NRCS identifying the specific parcel as selected for funding or must be within 12 months of the easement closing date.
- (3) Eligible entities must provide a copy of the applicable valuation report used to establish the fair market value of the agricultural land easement to NRCS at least 90 days prior to the planned easement closing date or the earlier whenever possible. NRCS must obtain a technical review and approve the value determination prior to the eligible entity's purchase of the easement, including payment of easement compensation to the landowner.
- (4) Certified eligible entities under an ACEP-ALE grant or program agreement, must provide a copy of the appraisal report at the time the payment request is submitted. NRCS will obtain a technical review of a percentage of the appraisals as part of the quality assurance review process that occurs after an easement has been acquired. NRCS will conduct quality assurance reviews, including the technical appraisal review, on at least 15 percent of the completed agricultural land easement transactions submitted for payment each fiscal year. The percentage of quality assurance reviews conducted in a given fiscal year may be higher for certified entities with low numbers of transactions or with issues identified during the quality assurance reviews.

C. Fair Market Value of the Agricultural Land Easement Using Areawide Market Analysis

- (1) An areawide market analysis for ACEP-ALE must result in a determination of a fair market value of the agricultural land easement, which requires a determination of both the unencumbered before value of the land uses included in the market area and an after value of such lands as encumbered by the specific terms of the agricultural land easement deed that must be used for all parcels. In order for these values to be

- determined, the land uses and market areas identified must contain sufficient comparable sales for both the before- and the after-values to be determined.
- (2) Requests by the eligible entity to obtain and use an areawide market analysis for determining fair market value of the agricultural land easement must be submitted to the State conservationist and approved by EPD director prior to entering into the ALE-agreement. As part of the request, the eligible entity must include the following documentation:
    - (i) A map and description of the market areas to be analyzed;
    - (ii) Adequately descriptive definitions of the land uses to be analyzed;
    - (iii) The proposed standard agricultural land easement deed to be used on all enrollments within each market area; and
    - (iv) A statement from a State-certified general appraiser (see 440-CPM-527-E) that there is sufficient homogeneity of the proposed market area and property types to be analyzed and that there are sufficient available comparable sales, for both the before and after condition, that it is their preliminary opinion that it is possible for an areawide market analysis to be completed in accordance with the NRCS statement of work and applicable industry standards.
  - (2) As part of the approval to use an areawide market analysis, EPD will provide the State conservationist and, as applicable, the EAB team, the specific provisions that must be included with the ALE-agreement to set forth the requirements and procedures for those entities that will be obtaining and using an areawide market analysis. The eligible entity may obtain the areawide market analysis after the ALE-agreement with the specific areawide market analysis provisions has been executed.
  - (3) The areawide market analysis must be conducted in accordance with NRCS specifications and completed and signed by a person determined by NRCS to have professional expertise and knowledge of agricultural land values in the area subject to the areawide market analysis (see subpart U of this part for the “Specifications and Scope of Work for Areawide Market Analysis for ACEP-ALE”). The areawide market analysis must be reviewed by the NRCS national appraiser and approved by the EPD director. The State conservationist must receive this written approval from the EPD director prior to calculating the final Federal share and issuing any payments for an ALE parcel listed on an ALE-agreement with approval to use an areawide market analysis.
  - (4) The original areawide market analysis, once approved by the NRCS national appraiser and EPD director, may be used as the basis for determining the fair market value of the agricultural land easement and the associated Federal share for parcels listed on an attachment A and an attachment B to an ALE-agreement. If a subsequent attachment to the same ALE-agreement is proposed and if no significant changes are anticipated in the fair market values from the original areawide market analysis, then the eligible entity may obtain a review and written statement from the appraiser who prepared the original areawide market analysis documenting that the fair market values have not changed significantly (no more than plus or minus 10 percent) and are still valid. The statement must explain the process used by the appraiser to make the determinations. If it is confirmed and documented that there are no significant changes, the eligible entity may request EPD approval through the State conservationist to use an extension to the original areawide market analysis rather than obtaining a new areawide market analysis. If the State conservationist concurs with this request, he or she will submit the request for EPD director approval. The per-acre fair market values for which the eligible entity will seek cost-share assistance from NRCS must remain the same or lower than those in the original analysis.

- (i) For noncertified eligible entities with an ALE cooperative agreement originally executed with the required areawide market analysis provisions, the ALE areawide market analysis may only be reviewed and extended once following the original report and may only be used for parcels identified on an attachment C to the ALE cooperative agreement.
- (ii) For certified eligible entities with an ALE grant agreement originally executed with the required areawide market analysis provisions, the ALE areawide market analysis may be reviewed and extended more than once following the original report. The original report must be reviewed annually, and the extension is only to be used for the parcels identified on the attachment in the year the extension is approved.

D. Fair Market Value of the Agricultural Land Easement Using Another Industry-Approved Method

Requests from eligible entities to use another industry-approved method must be submitted to State conservationist and approved by the Chief of NRCS prior to entering into the ALE-agreement. As part of the request, the entity must identify the industry-approved method proposed and copies of, or references to, the applicable industry standards. If approved, NRCS will identify the acceptable applicable industry standards and provide any associated NRCS specifications for the methodology approved.