

## **Part 308 – Agricultural Conservation Easement Program - Agricultural Land Easement (ACEP-ALE) Buy-Protect-Sell Transactions**

### **308.0 Overview of ACEP-ALE Buy-Protect-Sell Transactions**

#### **A. Introduction**

- (1) A buy-protect-sell transaction is a legal arrangement between an eligible entity and NRCS relating to land owned or being purchased by an eligible entity on a transitional basis during which an agricultural land easement will be secured on eligible private or Tribal land, and ownership of the land transferred to a qualified farmer or rancher in accordance with the requirements specific to buy-protect-sell transactions and as set forth in the terms of the ALE-agreement.
- (2) The eligible entity must specify on Form NRCS-CPA-41A, “Parcel Sheet for Entity Application for an Agricultural Land Easement (ALE) Agreement” the buy-protect-sell transaction type for which they are applying as either—
  - (i) Pre-closing Transfer.—Wherein the eligible entity must transfer ownership of the land to a qualified farmer or rancher at or prior to closing on the agricultural land easement and the eligible entity will hold the agricultural land easement prior to receiving the Federal share.
  - (ii) Post-closing Transfer.—Wherein the eligible entity must transfer ownership of the land to a qualified farmer or rancher not later than 3 years after closing on the agricultural land easement, unless an extension of such time has been authorized by NRCS subject to specific requirements.
- (3) For the purposes of buy-protect-sell transactions, a ‘qualified farmer or rancher’ is the term for the persons, legal entities, or Indian Tribes that meet the requirements set forth in section 308.4(B) below as determined by NRCS, and collectively includes all the persons, legal entities, or Indian Tribes to whom the eligible entity will transfer the ownership of an individual parcel through the buy-protect-sell transaction.
- (4) All buy-protect-sell transactions must follow the processes and meet the applicable requirements set forth in Title 440-Conservation Programs Manual (CPM), Part 527, “Easement Common Provisions,” and Part 528, “Agricultural Conservation Easement Program (ACEP),” (440-CPM-527) and this national instruction (NI) 300-308.

### **308.1 Entity Eligibility, Limitations, and Roles for Buy-Protect-Sell Transactions**

A. Only private or Tribal land may be eligible for a buy-protect-sell transaction. Therefore, only those eligible entities that are nongovernmental organizations (meeting the criteria set forth in 440-CPM-528.32B(2)) or Tribal entities (meeting the criteria set forth in 440-CPM-528.32B(3)) may apply for a buy-protect-sell transaction on land they own or are in the process of purchasing. Eligible entities that are State or local government agencies, as described in 440-CPM-528.32B(1), are not eligible to apply for a buy-protect-sell transaction, and, with the exception of Tribal lands, land owned or being purchased by governmental agencies are not eligible for buy-protect-sell transactions.

**Note:** An eligible entity that is a State or local government may not apply for a buy-protect-sell transaction nor at any time be a landowner of a parcel subject to a buy-protect-sell transaction. However, a State or local government eligible entity may, along with the BPS-eligible entity that alone is eligible for a buy-protect sell transaction, be identified as another eligible entity holder (grantee) of the agricultural land easement or may be a co-holder or third-party right holder of an agricultural land easement acquired under a buy-protect-sell transaction. In such cases, the State or

Local government eligible entity must, as applicable, be a party to the ACEP-ALE Program Agreement and the associated ACEP-ALE parcel cost-share contract (Parcel Contract) for the individual buy-protect-sell transaction.

B. A single eligible entity must be the ‘buy-protect-sell eligible entity’ (BPS-eligible entity) for an individual buy-protect-sell transaction, and the BPS-eligible entity must:

- (1) Submit the Form NRCS-CPA-41A on the land they own or are in the process of purchasing;
- (2) Meet the criteria set forth in section 440-CPM-528.32B(2) or B(3) below;
- (3) Be party to the ACEP-ALE program agreement as an eligible entity;
- (4) Be identified as the “Lead Eligible Entity” on the parcel contract for the individual parcel subject to the buy-protect-sell transaction;
- (5) Ensure the terms and conditions of the ACEP-ALE program agreement and associated parcel contract are met; and
- (6) Be a holder (grantee) of the agricultural land easement on the parcel owned by the qualified farmer or rancher.

C. An agricultural land easement must at all times be held by an eligible entity that meets the requirements set forth in 440-CPM-528.32B and C, and at no time may the same eligible entity be both a holder of the agricultural land easement and a landowner of the parcel.

### 308.2 Eligibility Requirements Specific to Buy-Protect-Sell Transactions

A. Landowner Eligibility.—All persons, legal entities, or Indian Tribes that are or will be the landowners of record of a parcel subject to a buy-protect-sell transaction and meet the definition of a landowner as defined in 440-CPM-528.190(A)(68) must meet the payment eligibility requirements as set forth in 440-CPM-528.35 and this NI. The timing of the payment eligibility determinations and therefore the landowners who must meet the payment eligibility requirements is specific to buy-protect-sell transaction type. These timing requirements are set forth in 440-CPM-528.35(A)(4), *et seq.*, and in this NI.

B. Land Eligibility.—Only land that meets the eligibility requirements set forth in 440-CPM-528.33 and 528.34, and this NI may be eligible for a buy-protect-sell transaction, as determined by NRCS.

- (1) Conditions Necessitating Transitional Ownership.—As identified in 440-CPM-528.33D(2), to be eligible for a buy-protect-sell transaction, private or Tribal land that otherwise meets the ACEP-ALE eligibility requirements must also be subject to conditions, as determined by NRCS, that necessitate ownership of the parcel by the BPS-eligible entity on a transitional basis prior to the creation of an agricultural land easement, such as—
  - (i) Imminent threat of development or fragmentation into parcels below the median size of farms or ranches in the county or parish as determined by the USDA’s most recent National Agricultural Statistical Survey (NASS);
  - (ii) Planned or approved conversion of agricultural land to developed, nonagricultural uses or of grasslands to more intensive agricultural uses;
  - (iii) Part of a documented eligible entity program to transition ownership of agricultural lands to historically underserved farmers or ranchers; or
  - (iv) Those that meet the requirements of a State-specific transitional ownership condition category where established by the State conservationist in consultation with the State technical committee. Prior to the beginning of each fiscal year, States that elect to establish such categories must—
    - Describe and document the category, including the criteria and conditions that must be met, for a parcel to be eligible under such category.

## Title 300 – National Instruction

- Identify the types of evidence required to support a determination of eligibility under such category.
  - Submit to the Easement Programs Division (EPD) Director, a copy of the State policy or other documentation that sets forth the requirements for each category established.
  - Make publicly available the description of each category and the requirements for consideration under such category.
- (2) Evidence of Conditions Necessitating Transitional Ownership.—Documentation of the conditions that exist that necessitate the BPS-eligible entity's transitional ownership of the parcel must be provided to NRCS. Examples of such documentation include:
- (i) Zoning or subdivision plans approved by the county, parish, or municipality authorizing the division or subdivision of the offered parcel into parcels below the median size of farms or ranches in the county or parish based on the most recent USDA NASS data;
  - (ii) Evidence of recent development or sales of agricultural land near the offered parcel for developed, non-agricultural uses or for conversion of grasslands to more intensive agricultural uses;
  - (iii) A purchase agreement or offer made for the parcel by a developer, oil and gas company, or other nonagricultural buyer;
  - (iv) On a parcel the BPS-eligible entity is in the process of purchasing, documentation that the existing landowner is aware of and not themselves interested in protecting their agricultural land through a standard ALE transaction and is not interested in selling or unable to sell their land to a farmer or rancher;
  - (v) The materials about the eligible entity's program that has successfully facilitated the transition of ownership of agricultural lands to historically underserved farmers or ranchers and a summary of how the offered parcel would contribute to such program; or
  - (vi) Where established, items identified as evidence required to support a determination of eligibility under an applicable State-specific transitional ownership condition category.
- (3) Transitional Ownership Requirements.—The BPS-eligible entity must meet the transitional ownership requirements and provide NRCS evidence that they either:
- (i) Currently own the parcel and have been the owners of such parcel for not more than 3 years prior to the date the individual parcel sheet application (Form NRCS-CPA-41A) is originally submitted for the offered buy-protect-sell parcel.
    - At the time of application, evidence must be provided of the BPS-eligible entity's ownership of the parcel and the purchase price the BPS-eligible entity paid for the parcel. Such evidence may include a copy of the recorded ownership deed, title insurance policy, or certificate of title, along with a settlement statement.
    - If the BPS-eligible entity has owned the parcel for more than 3 years:
      - The land is ineligible for enrollment under a post-closing transfer.
      - The Easement Programs Division (EPD) director may authorize a waiver to consider the parcel for enrollment under a pre-closing transfer only if all the following criteria are met:
        - The BPS-eligible entity has not owned the parcel for more than 7 years from the time the NRCS-CPA-41A was initially submitted.
        - At the time of application, the BPS-eligible entity has identified the qualified farmer or rancher to whom the ownership of the parcel will be transferred at or prior to closing on the agricultural land easement.
        - The BPS-eligible entity submits a written request and supporting documentation to the State conservationist.

## Title 300 – National Instruction

- The State conservationist reviews the waiver request, recommends the waiver for approval, and submits the waiver request package recommended for approval to the EPD director.

**Note:** If the State conservationist does not support approval of the waiver, the State conservationist has the authority to determine the application ineligible and must notify the eligible entity of the determination.

- All other eligibility criteria for a pre-closing transfer buy-protect-sell transaction are met.

(ii) Are actively purchasing fee title to the parcel offered for enrollment.

- Evidence of active purchase must be provided at the time of application and may include a valid purchase and sale agreement in which the BPS-eligible entity is named as the purchaser or equivalent party.
- The BPS-eligible entity must complete their purchase of the parcel within 12 months of the date NRCS originally executed the Parcel Contract.
  - If the BPS-eligible entity will not complete their purchase of the parcel within the 12-month timeframe and the completion of such purchase is imminent, then prior to the expiration of the 12-month deadline the BPS-eligible entity may request a single 90-day extension from the NRCS State conservationist.
  - The BPS-eligible entity must provide sufficient evidence that demonstrates to the satisfaction of NRCS that their completion of purchase of the parcel land is imminent. Such evidence may include an amended purchase and sale agreement, a draft settlement statement for the impending purchase, or other documentation from the closing agent affirming that closing is scheduled and providing an estimated closing date.
    - If the BPS-eligible entity fails to complete their purchase of the parcel within the requisite time period, the Parcel Contract will be automatically terminated and the ACEP-ALE funds deobligated.
    - Within 30 calendar days of their completed purchase of the parcel, the BPS-eligible entity must provide NRCS a copy of the recorded ownership deed and evidence of the final purchase price paid by the BPS-eligible entity for the parcel.

C. Legal conformance of post-closing transfer transactions.—

- (1) At the time of application, the BPS-eligible entity must provide NRCS specific information on the proposed arrangement of the buy-protect-sell transaction and describe how the transaction will conform with applicable ALE regulations, policy, and agreement requirements, and State laws governing conservation easements. NRCS has sole discretion to determine the effect of the proposed transactional arrangement on the eligibility of the parcel. The information provided to NRCS must include the following:
- (i) A list of the parties to be involved in the buy-protect-sell transaction (e.g., BPS-eligible entity, eligible entity easement holders, co-holders, third-party right holders, and landowner at time of easement closing).
  - (ii) A description of each party's roles and responsibilities with respect to the acquisition, holding, transfer, monitoring, and enforcement of the agricultural land easement and the ownership of the parcel.
  - (iii) A description or evidence of each party's qualifications to function in the identified role and how adequate separations of duties will be maintained throughout the transaction, including that:
    - The eligible entity holder (grantee) of the agricultural land easement is responsible for and must be independently capable of conducting annual monitoring and

- enforcing the terms of the agricultural land easement deed, including during the period after the agricultural land easement is closed and before ownership is transferred to the qualified farmer or rancher.
- The relationship between the eligible entity holder (grantee) of the agricultural land easement and the landowner must be sufficiently separate such that the agricultural land easement is valid and enforceable upon closing and there will be no merger of title issues.
- (iv) Identification of whether the post-closing transfer will occur through an interim landowner scenario, wherein prior to closing on the agricultural land easement the BPS-eligible entity will transfer ownership of the parcel to a legal entity that will temporarily hold such ownership from the time the agricultural land easement is initially conveyed until the ownership of the parcel subject to the agricultural land easement is transferred to the qualified farmer or rancher. Under an interim landowner scenario, the BPS-eligible entity must be a holder (grantee) of the agricultural land easement and the interim landowner must:
- Be a legal entity (such legal entity is not required to be an eligible entity);
  - Not be an agency or unit of government;
  - Not be an individual person or the trust of an individual person;
  - Be a sufficiently separate and independent legal entity from the BPS-eligible entity such that the BPS-eligible entity is able to conduct annual monitoring and enforce the terms of the agricultural land easement deed;
  - Provide evidence of its fee title ownership of the parcel prior to the conveyance of the agricultural land easement;
  - Be capable of and obligated to transfer the ownership of the parcel to the qualified farmer and rancher; and
  - Prior to closing on the agricultural land easement, meet the landowner payment eligibility requirements (see paragraph (A) of this section) for the fiscal year in which the Parcel Contract or modification thereto is executed to identify such legal entity as the ‘landowner’ (see section 308.6).
- (v) Identification of whether the post-closing transfer will occur through an interim easement holder scenario, wherein the BPS-eligible entity will retain ownership of the parcel and a separate eligible entity will hold the agricultural land easement from the time it is initially conveyed until the ownership of the parcel subject to the agricultural land easement is transferred to the qualified farmer or rancher. Under an interim easement holder scenario, the BPS-eligible entity must be a holder of the agricultural land easement after it transfers ownership of the parcel to the qualified farmer or rancher, and the interim easement holder:
- Must be an eligible entity;
  - Must be party to the ALE-agreement and appropriately identified in the individual Parcel Contract for the specific transaction;
  - Must be a sufficiently separate and independent eligible entity from the BPS-eligible entity such that the interim easement holder eligible entity is able to conduct annual monitoring and enforce the terms of the agricultural land easement deed; and
  - May, after ownership of the parcel is transferred to the qualified farmer or rancher, also be holder (grantee) of the agricultural land easement along with the BPS-eligible entity.
- (vi) Relevant State law that authorizes such transactions.
- (vii) The proposed timeline.
- (viii) The consideration that will be paid at the time the agricultural land easement is initially conveyed to ensure it is valid.

- (ix) Identify the type of documentation the BPS-eligible entity will submit as evidence that it is a holder of the agricultural land easement.
  - (x) A description of how the BPS-eligible entity will ensure the requirements set forth in the ALE-agreement and associated Parcel Contract are met, including but not limited to obtaining and reviewing the appraisal, title, due diligence materials, and legal survey as needed, completing the baseline documentation report, and submitting the required items for NRCS review.
  - (xi) Other information NRCS may require.
- (2) NRCS shall consult with the USDA Office of the General Counsel (OGC) regarding the legal conformance of the proposed arrangement of the post-closing transfer.
  - (3) The specific terms needed to ensure the legal conformance of the post-closing transfer must be included in the individual Parcel Contract as described in section 308.6 below.

### **308.3 Processing Buy-Protect-Sell Transaction Applications and Making Selections for Funding**

A. Individual parcel sheet applications (Form NRCS-CPA-41A) submitted for a buy-protect-sell transaction must meet the requirements set forth in 440-CPM-528.31 and this NI and must include a completed buy-protect-sell supplement to the parcel sheet application (Form NRCS-CPA-41A-BPS-supplement) and all accompanying documents.

B. Buy-protect-sell transaction applications must be ranked in accordance with the ACEP-ALE ranking process and criteria set forth in 440-CPM-528.41. As described in 440-CPM-528.41(B), States may develop and use specific ranking factors unique to buy-protect-sell transactions.

C. The complete application information submitted by the BPS-eligible entity, including Form-NRCS-CPA-41A, Form NRCS-CPA-41A-BPS-Supplement, and the associated supporting documents, will be evaluated by NRCS as described below.

- (1) The State first reviews the application materials, requests missing or additional information needed from the BPS-eligible entity, and, once a complete application is received, takes the following actions:
  - (i) Conduct landowner eligibility determinations based on the specific buy-protect-sell transaction type as set forth in 440-CPM-528.35 and in this NI.
  - (ii) Determine whether the parcel meets the basic land eligibility requirements applicable to all ACEP-ALE enrollments as set forth in 440-CPM-582.33(A), (B), (C), and (D)(3)–(4) and in 440-CPM 528.34.
  - (iii) Make a preliminary determination whether the parcel meets the buy-protect-sell specific land eligibility requirements as set forth in 440-CPM-528.33(D)(2) and section 308.2(B).
  - (iv) If after these initial reviews the State determines the application is:
    - Ineligible.—No further review is necessary; States must notify the applicant of ineligibility determination.
    - Potentially eligible.—States must rank the parcel in accordance with the requirements set forth in 440-CPM-528.41.

**Note:** States may rank a buy-protect-sell application prior to conducting initial eligibility determinations.

- (2) For applications States determine to be potentially eligible and rank highly enough to warrant selection for funding, the State conservationist must submit the application package to the Easement Acquisitions Branch (EAB) for a buy-protect-sell final eligibility determination. The application package must include all application and supporting materials provided by the BPS-eligible entity and the State's initial eligibility determination documentation.

- (i) EAB will review the application package and conclude the eligibility determinations related to the buy-protect-sell transaction-specific requirements.
  - (ii) EAB must consult with OGC to determine the legal conformance of the proposed arrangement for each post-closing transfer and as needed for individual pre-closing transfers. Based on the legal conformance determination, EAB will develop the specific terms that must be included in the ALE-agreement and Parcel Contract should the parcel be selected for funding.
  - (iii) The EAB will notify the State conservationist in writing of the eligibility determination and required ALE-agreement and Parcel Contract terms.
  - (iv) Following receipt of written notification from EAB, the State conservationist may select the eligible buy-protect-sell transaction application for funding.
    - If the application is selected, the State will notify EAB who will then administer the enrollment and acquisition of the agricultural land easement through the buy-protect-sell transaction, including but not limited to, conducting all activities related to the execution and management of the Parcel Contract and the acquisition of and payment for the agricultural land easement.
    - If the eligible application is not selected for funding, the State conservationist will notify the eligible entity of the status of the deferred application.
  - (v) If at any time the State or EAB determines that the applicable eligibility requirements are not met, the agricultural land easement must not be acquired.
- (3) Applications that do not rank high enough to warrant selection for funding or are determined ineligible should not be forwarded to EAB for a buy-protect-sell eligibility determination.

#### **308.4 Transfer of Ownership Requirements for Buy-Protect-Sell Transactions**

A. Overview.—

- (1) In addition to unique eligibility requirements, ACEP-ALE buy-protect-sell transactions are subject to unique requirements related to the transfer of the ownership of the parcel, including that:
  - (i) The initial sale of the parcel that is or will be subject to the agricultural land easement must be made to the qualified farmer or rancher (see paragraph B below).

**Note:** Initial sale of the parcel does not include the transfer of fee title ownership to the legal entity that will serve as the interim landowner under a post-closing transfer as described in 308.2(C)(1)(iv).

  - (ii) The sale of the parcel to the qualified farmer or rancher must be for a purchase price that does not exceed the lesser of—
    - The original purchase price of the parcel paid by the BPS-eligible entity; or
    - The agricultural value of the parcel as determined by an appraisal (see paragraph C below).
  - (iii) The sale of the parcel to the qualified farmer or rancher may also include reasonable holding and transaction costs incurred by the BPS-eligible entity that in total do not exceed 10 percent of the agricultural value of the parcel as determined by an appraisal (see paragraph D below).
- (2) The ALE-agreement and associated Parcel Contract terms identify the transfer of ownership requirements that the BPS-eligible entity must meet and NRCS must verify. To facilitate these requirements being met:
  - (i) Form NRCS-CPA-41A-BPS-Supplement identifies the information the BPS-eligible entity must provide during the application process.

- (ii) For eligible applications selected for funding, the Parcel Contract includes specific terms related to the transfer of ownership under the individual buy-protect-sell transaction. EAB is responsible to ensure these specific terms are appropriately included in the individual Parcel Contract and agreed to by the BPS-eligible entity and NRCS.
- (iii) NRCS, through the EAB, will determine whether the transfer of ownership requirements have been satisfied and will identify and communicate to the BPS-eligible entity the determination and any corrective actions needed.
- (iv) Paragraphs B through E below describe each transfer of ownership requirement in detail and section 308.7(B) provides the transfer of ownership verification procedures and documentation requirements.

B. Qualified Farmer or Rancher Requirements.—The BPS-eligible entity must ensure timely transfer of ownership of the parcel to the qualified farmer or rancher. NRCS, through EAB, will determine whether the qualified farmer or rancher requirements are met based on the following criteria:

- (1) All landowners, including required members of landowner legal entities, must have their records established with Farm Service Agency (FSA) and meet the payment eligibility requirements as set forth in 440-CPM-528.35 and as further specified in this NI.
  - (i) The payment eligibility requirements must be met for the fiscal year in which the Parcel Contract or modification thereto is executed to identify as landowners the qualified farmer or rancher (see also section 308.6).
  - (ii) The BPS-eligible entity must notify prospective landowners that they must timely submit the required documents to FSA for payment eligibility determinations, which may take more than 120 days.
- (2) If ownership of the parcel will be held by:
  - (i) One person, legal entity, or Indian Tribe, that one person, legal entity, or Indian Tribe must be a farmer or rancher.
  - (ii) Multiple persons, legal entities, Indian Tribes, or any combination thereof, at least 50 percent of the ownership of the parcel must be held by persons, legal entities, or Indian Tribes that are farmers or ranchers.

**Example:** Ownership of the land will be held through a 25 percent interest held by Mr. John Smith, an individual person, a 25 percent interest held by Ms. Jane Jones, an individual person, and a 50 percent interest held by 2Farmers, LLC. At a minimum either 2Farmers, LLC (a 50 percent owner) must be a farmer or rancher or both individual persons, Mr. Smith and Ms. Jones, (two 25 percent owners for a total of 50 percent) must be farmers or ranchers.

- (3) For each prospective landowner, the BPS-eligible entity must provide to NRCS evidence that the person, legal entity, or Indian Tribe, is a farmer or rancher. Such evidence may include:
  - (i) A Schedule F to IRS Form 1040 filed for the person, legal entity, or Indian Tribe, for one of the three most recent full tax years;
  - (ii) Certification that the person, legal entity, or Indian Tribe has been determined by FSA to be ‘actively engaged in farming’ for one of the two most recent years based on their Farm Operating Plan submitted on the appropriate CCC-902; or
  - (iii) Certification that the person, legal entity, or Indian Tribe currently is a beginning farmer or rancher as determined by FSA.
- (4) NRCS, through the EAB, will determine whether the qualified farmer or rancher requirements are met by completing payment eligibility and farmer or rancher determinations for each person, legal entity, or Indian tribe on an individual basis, and verifying that at least 50 percent of the ownership of the parcel is or will be held by farmers or ranchers (see 308.7(B)).



## Title 300 – National Instruction

- (5) An NRCS determination that the qualified farmer or rancher requirements have been met as described above:
  - (i) Applies collectively to all of the persons, legal entities, or Indian Tribes to whom ownership of the parcel is or will be transferred pursuant to the buy-protect-sell transaction transfer of ownership requirements; and
  - (ii) Has no bearing or relationship to similar determinations under other programs.

C. Sale at Agricultural Value Requirements.—The sale of the parcel to the qualified farmer or rancher must be for a purchase price that does not exceed the lesser of the agricultural value of the parcel or the original purchase price paid by the BPS-eligible entity for the parcel as determined by NRCS, through EAB, based on the following requirements:

- (1) The agricultural value of the parcel must be determined by an individual appraisal. The BPS-eligible entity must provide NRCS an appropriately obtained and acceptable determination of the agricultural value of the parcel that conforms to applicable industry standards and the terms specified in the ALE-agreement and Parcel Contract.
- (2) 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).
- (3) The “agricultural value” of the parcel may be determined using one of the following methods:
  - (i) The “after” value of the parcel encumbered by the ACEP-ALE, as determined by an individual USPAP or UASFLA appraisal meeting the ACEP-ALE appraisal and valuation requirements set forth in 440-CPM-528.53(B) and 440-CPM-527, Subparts E and F, and using either:
    - The same NRCS-approved appraisal used for the ACEP-ALE acquisition, or
    - An update to the original ACEP-ALE appraisal report or a new USPAP or UASFLA appraisal that meets the ACEP-ALE appraisal requirements.
  - (ii) An individual USPAP appraisal wherein the instructions to the appraiser identify that the value of the parcel must be based on the assumption that agricultural use is considered as the highest and best use of the parcel.
  - (iii) Another industry-approved method identified by the BPS-eligible entity at the time of application and approved as a valid method by the NRCS National Appraiser prior to execution of the Parcel Contract.
- (4) Prior to executing the Parcel Contract, the BPS-eligible entity and NRCS must agree upon the appraisal methodology that will be used to determine the agricultural value of the parcel. The terms of the Parcel Contract will identify the agreed-to methodology and include as an exhibit any associated appraisal specifications or requirements.
- (5) NRCS must obtain an appraisal technical review or conduct an administrative review of the appraisal used to determine the agricultural value of the parcel, unless the appraised agricultural value is greater than the original purchase price paid by the BPS-eligible entity for the parcel (see 440-CPM-527, Subpart F). The appraisal used to determine the agricultural value must be approved for use by an NRCS National Appraiser.

D. Reasonable Holding and Transaction Costs Requirements.— The requirements that must be met for NRCS, through the EAB, to determine that the amounts included in the sale of the parcel to the qualified farmer or rancher for holding and transaction costs incurred by the BPS-eligible entity are reasonable and in total do not exceed 10 percent of the agricultural value of the parcel are as follows:

- (1) Holding and transaction costs may only include the BPS-eligible entity’s actual costs for holding and transferring ownership of the parcel and conveying an agricultural land easement on the parcel. Such costs are limited to amounts incurred after the BPS-eligible entity took ownership of the parcel and paid to a third-party for the following goods, services, or fees:
  - (i) Mortgage interest, property taxes, and insurance paid for the parcel.

## Title 300 – National Instruction

- (ii) Title commitments or reports.
- (iii) Title insurance policies for the parcel.
- (iv) Cost of appraisal to determine the fair market value of the agricultural land easement.
- (v) Cost of appraisal to determine agricultural value.
- (vi) Costs to obtain a legal boundary survey for the parcel.
- (vii) Closing and transaction costs for the transfer of ownership of the parcel to the qualified farmer or rancher.
- (viii) Easement closing costs.
- (ix) Phase-I Environmental site assessment.
- (x) Easement baseline documentation report.
- (xi) Easement mineral assessment report.
- (xii) For post-closing transactions only:
  - Costs for a holding company or other independent third party to hold ownership of the parcel for the period between agricultural land easement closing date and the date ownership of the parcel subject to the agricultural land easement is transferred to the qualified farmer or rancher (interim landowner scenario).
  - Costs related to subsequent recording of documents used (e.g., assignment, transfer, amendment) to identify the BPS-eligible entity as a holder of the agricultural land easement once ownership of the parcel subject to the agricultural land easement is transferred to the qualified farmer or rancher.
- (xiii) Other types of holding and transaction costs submitted by the BPS-eligible entity and approved for inclusion by NRCS, through EAB.
- (2) Prior to executing the Parcel Contract, the BPS-eligible entity and NRCS must agree upon the holding and transaction cost items that may be included in the amount of the sale and include the list of agreed-to items in the terms of the Parcel Contract.
- (3) Any amount of easement acquisition related costs as listed on the NRCS-CPA-230 that are included in the amount of the sale to the qualified farmer or rancher may not be included in the calculation of the non-Federal share.

E. Transfer of Ownership Timing Requirements.—The sequence and timeframes in which the transfer of ownership to the qualified farmer or rancher must occur are specific to the buy-protect-sell transaction type.

- (1) For a pre-closing transfer.—The BPS-eligible entity must transfer ownership of the parcel to the qualified farmer or rancher at or prior to closing on the agricultural land easement and the BPS-eligible entity must be a holder of the agricultural land easement prior to requesting and receiving the Federal share.
- (2) For a post-closing transfer.—
  - (i) The agricultural land easement must be closed within 2 fiscal years following the fiscal year in which the individual Parcel Contract is originally executed.

**Example:** For a Parcel Contract originally executed on 6/5/2021 (during FY 2021), the agricultural land easement must be closed by 9/30/23 (which is the end of FY 2023, the fiscal year that is 2 fiscal years following FY 2021).

- (ii) No later than 3 years after the agricultural land easement closing date, the ownership of the parcel must be transferred to the qualified farmer or rancher, and the BPS-eligible entity must be a holder of the agricultural land easement.
  - Until the transfer of ownership is completed, the BPS-eligible entity must provide regular updates to NRCS, through EAB, regarding the status of securing such transfer.

- An extension of up to 12 months, to a date not later than 4 years after the agricultural land easement closing date, may be authorized if NRCS determines, in its sole discretion, that extenuating circumstances warrant the extension and the following requirements are met:
    - The BPS-eligible entity must submit a written request to the EPD director no less than 90 days prior to the expiration of the original 3-year deadline. The BPS-eligible entity must include evidence of the extenuating circumstances preventing transfer of ownership by the original 3-year deadline, through no fault or inaction on the part of the BPS-eligible entity, and evidence that the transfer of ownership to the qualified farmer or rancher will be completed by the extended expiration date being requested.
    - The EPD director, in consultation with the State conservationist, will determine whether to approve or deny the request. If the EPD director approves the request, a Parcel Contract modification must be executed by all parties prior to the expiration of the Parcel Contract. Extensions to a date later than 4 years after the agricultural land easement closing date are not permitted.

NRCS will determine whether the buy-protect-sell transaction, which includes the acquisition of the agricultural land easement and the transfer of ownership of the parcel to the qualified farmer or rancher, has been completed in compliance with all applicable requirements and will record such determination in the land records.
    - If NRCS determines such requirements have been met, NRCS will record notice of its determination that the buy-protect-sell transaction has been completed in compliance with such requirements (see 308.7 below).
    - If NRCS determines such requirements have not been met, the BPS-eligible entity must repay the entirety of any ACEP-ALE funds provided for the purchase of the agricultural land easement. NRCS will notify the BPS-eligible entity of its determination of buy-protect-sell transaction noncompliance and any repayment requirements. NRCS will record a quitclaim in the land records to divest the United States of its rights and interests in the agricultural land easement (see 308.7 below).
- (iii) The BPS-eligible entity must be a holder (grantee) of the agricultural land easement prior to requesting and receiving the Federal share.

### **308.5 ALE-Agreement and Parcel Contract Terms for Buy-Protect-Sell Transactions**

A. Overview.—ACEP-ALE cost-share funds for an approved buy-protect-sell transaction may be provided through an ACEP-ALE Parcel Contract executed under a valid ACEP-ALE Program Agreement. The ACEP-ALE Program Agreement must include, in the body of the agreement or attached as an exhibit to the agreement, the general terms applicable to all buy-protect-sell transactions. The ACEP-ALE Parcel Contract must also include the terms specific to the individual buy-protect-sell transaction for the identified parcel. Substitution of the buy-protect-sell parcel identified in the Parcel Contract is not authorized.

**Note:** An ACEP-ALE Cooperative Agreement for a buy-protect-sell transaction may only be used with specific written approval from the EPD director and subject to specific guidance provided with such approval. If approved, the ACEP-ALE Cooperative Agreement must include the buy-protect-sell transaction terms provided by EPD and is limited to the acquisition of a single agricultural land easement on the parcel identified on the agreement at the time of its execution. Additional parcels may not be funded under such agreements and a substitute parcel may not be

## Title 300 – National Instruction

identified under such agreements. An ACEP-ALE Grant Agreement may not be used for a buy-protect-sell transaction.

**B. General Terms.**—The ACEP-ALE Program Agreement and the individual Parcel Contract will include general terms that set forth the requirements, responsibilities, limitations for all buy-protect-sell transactions related to: the acquisition of the agricultural land easement; the transfer of ownership to the qualified farmer or rancher; the Federal and non-Federal share provisions; and the payment and contract close out procedures. At a minimum, these general terms will address the following requirements:

- (1) The standard expiration date for all individual Parcel Contracts is September 30 of the fifth fiscal year following the fiscal year in which the Parcel Contract is executed. Parcel Contracts may not be extended except for post-closing transfers where an extension to the transfer of ownership deadline has been authorized as set forth in 308.4(E)(2)(ii).
- (2) All buy-protect-sell transactions, irrespective of an eligible entity's certification status, are subject to document submission, review, and approval requirements as set forth in 440-CPM-528, NI 300-306, and this NI. Prior to closing on the agricultural land easement the BPS-eligible entity must prepare and submit to NRCS, and NRCS, through EAB, must review and approve:
  - (i) Each agricultural land easement deed in accordance with the requirements as set forth in 440-CPM-528.61. For certified eligible entities, use of the "ALE minimum deed terms" addendum is not required, however the agricultural land easement deed must meet the requirements as set forth in 440-CPM-528.74(2) and must be reviewed and approved by NRCS prior to closing on the easement.
  - (ii) Title review and clearance documents completed in accordance with the requirements for non-certified eligible entities as set forth in 440-CPM-528.62.
  - (iii) The baseline documentation report in accordance the requirements set forth in 440-CPM-528.60(C).
  - (iv) Any required or agreed-to ALE plans in accordance with the requirements set forth in 440-CPM-528.63(C).
  - (v) The determination of the fair market value of the agricultural land easement in accordance with the requirements set forth 440-CPM-528.53, including that all individual appraisals must have an NRCS-approved technical appraisal review completed prior to closing on the agricultural land easement.
- (3) Prior to closing on the agricultural land easement, the BPS-eligible entity must receive from NRCS, through EAB, the "NRCS Approval to Proceed with ALE Acquisition" letter.
- (4) The BPS-eligible entity must provide the documents necessary for NRCS, through EAB, to determine that the transfer of ownership to the qualified farmer or rancher requirements have been met (see sections 308.4, 308.6, and 308.7).

**Note:** The transfer of ownership terms specific to an individual transaction will be identified in the individual Parcel Contract as described in paragraph C of this section.

- (5) Payment of the ACEP-ALE Federal share may only be provided as a 'reimbursement' subject to the following timing limitations:
  - (i) For pre-closing transfers, only after NRCS has determined the transfer of ownership to the qualified farmer and rancher and agricultural land easement acquisition requirements have been met, and the agricultural land easement is held by the BPS-eligible entity.
  - (ii) For post-closing transfers, the agricultural land easement must be acquired within 2 fiscal years following the fiscal year in which the Parcel Contract is executed and:
    - For transactions under which the BPS-eligible entity is a holder (grantee) of the agricultural land easement from the time it is initially conveyed (i.e. interim

landowner scenario), payment may be made after the agricultural land easement has closed and is held by the BPS-eligible entity.

- For all other transactions (e.g., interim easement holder scenario) payment may be provided only after NRCS has determined the agricultural land easement acquisition requirements have been met, the BPS-eligible entity is a holder of the agricultural land easement, and the ownership of the parcel has been appropriately transferred to the qualified farmer or rancher.
- (6) The BPS-eligible entity must timely submit required documents to NRCS. In general, required documentation should be provided as early in the process as possible, and unless otherwise specified, at least 90 days prior to the action to be taken.
  - (7) Procedures for approval, correction, and compliance, including the requirements for the repayment of the ACEP-ALE Federal share.

C. Specific Terms.—Specific terms that must be agreed to by the BPS-eligible entity and NRCS and included in the ACEP-ALE Parcel Contract for the individual buy-protect-sell transaction must at a minimum identify:

- (1) The specific buy-protect-sell transaction type.
- (2) The requirements related to the persons, legal entities, or Indian Tribes that must be identified as landowners in the Parcel Contract or modifications thereto and the timing and applicability of landowner and payment eligibility requirements.
- (3) The date the BPS-eligible entity acquired fee title ownership of the parcel. If the BPS-eligible entity is still in the process of purchasing the parcel at the time the Parcel Contract is originally executed, the specific terms will also include:
  - (i) The requirements related to the completion of such purchase as set forth in 308.2(B)(3)(ii); and
  - (ii) That upon NRCS determination whether such requirements have been met, NRCS will either update the parcel contract to identify the date the BPS-eligible entity successfully acquired fee title ownership of the parcel or will terminate the parcel contract.
- (4) The appraisal methodology that will be used to determine the agricultural value of the parcel.
- (5) The list of items that may be included in the holding and transaction costs that may be charged to the qualified farmer or rancher.
- (6) The eligible entities that are party to the ALE-agreement and associated Parcel Contract, the eligible entities that will hold the agricultural land easement, all legal entities that will be identified as a co-holder or third-party right holder on the agricultural land easement deed.
- (7) For all post-closing transfers and as needed for pre-closing transfers, the specific legal arrangement of the individual buy-protect-sell transaction as reviewed and approved by NRCS in consultation with OGC.
- (8) For post-closing transfers, the information that will be provided in regular updates to NRCS regarding the status of securing the transfer of the ownership to the qualified farmer or rancher and the frequency of such updates.
- (9) For post-closing transfers, the buy-protect-sell transaction compliance determination and recordation of notice clause that must be included in the agricultural land easement deed.

### **308.6 Execution and Modification of the Parcel Contract and Schedule of Acquisition for Buy-Protect-Sell Transactions**

A. The Parcel Contract must identify all information as required in NI 300-306.4 and this NI 300-308. A modification to the Parcel Contract must be used to document each party's mutual agreement to allowable, subsequent changes, such as changes in acreage, easement cost information, landownership, eligible entity roles, other interest holder information, or transaction type. Parcel

## Title 300 – National Instruction

contract modifications must be completed and executed as described in NI 300-306.5 and this NI 300-308.

B. The Parcel Contract appendix for buy-protect-sell transactions (Form NRCS-CPA-1265-BPS-Appendix) must be used. The special provisions section of the “Form NRCS-CPA-1265-BPS-Appendix” must be fully completed at the time the Parcel Contract is originally executed to document each party’s agreement to the specific terms identified therein. In limited circumstances, the specific terms may be subsequently modified, provided such changes are mutually agreed to by all required parties and documented through the execution of a modification to the schedule of acquisition (Form NRCS-CPA-1267-BPS) with a fully complete update to the special provisions section attached as an exhibit.

C. The BPS-eligible entity must always be identified as the ‘Lead Eligible Entity’ on the Parcel Contract and in any subsequent modifications thereto.

D. NRCS may execute a Parcel Contract or any modification thereto, only after it has determined the information identified therein complies with applicable requirements, including that all required landowners, eligible entities, or other interest holders meet applicable eligibility requirements and are identified in the Parcel Contract as follows:

- (1) At the time of its original execution, the Form NRCS-CPA-1266-BPS, “Parcel Contract Schedule of Acquisition for Easement through a Buy-Protect-Sell Transaction” must identify the BPS-eligible entity as the landowner. For post-closing transfers, the BPS-eligible entity must meet the landowner and payment eligibility requirements for the fiscal year in which the Parcel Contract is originally executed (see section 308.2(A)).
- (2) Prior to closing on the agricultural land easement, the fully executed Parcel Contract Schedule of Acquisition for Easements through a Buy-Protect-Sell Transaction or modification thereto must identify:

(i) For pre-closing transfers:

- As landowners, the qualified farmer or rancher to whom ownership of the parcel will be transferred and which NRCS has determined meets the requirements set forth in sections 308.4(B) and 308.7(B)).
- The BPS-eligible entity as an ‘eligible entity holder’ of the agricultural land easement.

(ii) For post-closing transfers, interim landowner scenario:

As the landowner, the legal entity that will hold ownership of the parcel on an interim basis and which NRCS has determined meets the requirements set forth in section 308.2(C)(1)(c).

**Note:** Such legal entity must not be an eligible entity holder or legal entity co-holder or third-party right holder of the agricultural land easement.

- The BPS-eligible entity as an ‘eligible entity holder’ of the agricultural land easement.

(iii) For post-closing transfers, interim easement holder scenario:

- As the landowner, the BPS-eligible entity.
- The eligible entity that will hold the agricultural land easement from the time it is initially conveyed and which NRCS has determined meets the requirements set forth in section 308.2(D). Such eligible entity must not be listed as a landowner.

## Title 300 – National Instruction

**Note:** The BPS-eligible entity will continue to be identified as the ‘Lead Eligible Entity’ (participant) but will not be identified as an ‘eligible entity’ holder of the agricultural land easement.

- (3) Prior to NRCS issuing notice of successful buy-protect-sell transaction completion and compliance, the fully executed Parcel Contract Schedule of Acquisition for Easements through a Buy-Protect-Sell Transaction or modification thereto must identify:
  - (i) As landowners, the qualified farmer or rancher to whom ownership of the parcel has been transferred in accordance with all applicable requirements, as determined by NRCS (see sections 308.4 and 308.7(B)).
  - (ii) The BPS-eligible entity as an ‘eligible entity holder’ of the agricultural land easement.

E. Prior to closing on the agricultural land easement, the BPS-eligible entity may submit in writing to NRCS a request to complete the acquisition of the agricultural land easement and transfer of ownership to the qualified farmer or rancher under a different transaction type. Such requests may only be approved if NRCS, through EAB, determines that the agricultural land easement can be successfully acquired under the requested transaction type and subject to the following requirements:

- (1) Buy-Protect-Sell transaction to a Standard ALE transaction.—
  - (i) Ownership of the parcel must be transferred to eligible landowners that meet the qualified farmer or rancher requirements set forth in section 308.4(B); however, the other buy-protect-sell transaction requirements, such as sale at agricultural value and the holding and transaction cost limitations, will not apply.
  - (ii) The BPS-eligible entity must provide evidence sufficient for NRCS to determine the landowners meet the qualified farmer or rancher requirements and must provide evidence, such as a recorded deed, that ownership of the parcel has been transferred to the qualified farmer or rancher.
  - (iii) After ownership of the parcel has been transferred to the qualified farmer or rancher, all required parties must execute the appropriate Parcel Contract appendix for standard ALE transactions (Form NRCS-CPA-1265-Appendix for Standard ALE transactions) and a “Modification of the Parcel Contract Schedule of Acquisition for Easements through a Buy-Protect-Sell Transaction” (Form NRCS-CPS-1267-BPS) to identify the new landowners and change the transaction type from a Buy-Protect-Sell transaction to standard ALE transaction.
  - (iv) Following execution of such Parcel Contract modification, the remainder of the transaction will be subject to the requirements and procedures for a standard ALE transaction, except that payment of the Federal share may only be provided as a reimbursement after NRCS has determined the agricultural land easement has been acquired pursuant to the terms of the modified Parcel Contract.
- (2) Post-closing transfer to a pre-closing transfer.—
  - (i) The BPS-eligible entity must have a valid purchase agreement or equivalent document with the qualified farmer or rancher and must provide evidence sufficient for NRCS to determine the transfer of ownership requirements will be met.
  - (ii) The remainder of the transaction is subject to all applicable pre-closing transfer requirements and must be completed within the required timeframes based on the original Parcel Contract execution date.
  - (iii) The special provisions section of the Parcel Contract appendix (Form NRCS-CPA-1265-BPS-Appendix) must be updated to identify all parcel-specific terms related to the pre-closing transfer. A “Modification of the Parcel Contract Schedule of Acquisition for Easements through a Buy-Protect-Sell Transaction” (Form NRCS-CPA-1267-BPS) must be fully executed by all required parties and must:
    - Identify as landowners the qualified farmer or rancher;

- Change the transaction type from a post-closing transfer to a pre-closing transfer;
  - Attach the conservation easement deed language that does not include the post-closing transfer buy-protect-sell transaction compliance determination and recordation of notice clause; and
  - Document the approval of the changes made to the special provisions section of the Parcel Contract appendix.
- (3) Pre-closing transfer to a post-closing transfer.—
- (i) The written request must be submitted to NRCS within 12 months of the original Parcel Contract execution date, must state the reasons the transaction cannot be completed subject the terms of the existing parcel contract, and must include the all of the information needed for NRCS to determine the legal conformance of the proposed post-closing transfer as set forth in section 308.2(C).
  - (ii) If approved, the remainder of the transaction will be subject to all applicable post-closing transfer requirements and must be completed within the required timeframes based on the original Parcel Contract execution date.
  - (iii) The special provisions section of the Parcel Contract appendix (Form NRCS-CPA-1265-BPS-Appendix) must be updated to identify all parcel-specific special provisions related to the post-closing transfer. A “Modification of the Parcel Contract Schedule of Acquisitions for Easements through a Buy-Protect-Sell Transaction” (Form NRCS-CPA-1267-BPS) must be fully executed by all required parties and must:
    - Change the transaction type from a pre-closing transfer to a post-closing transfer;
    - Attach the conservation easement deed language that includes the post-closing transfer buy-protect-sell transaction compliance determination and recordation of notice clause; and
    - Document the approval of the changes made to the special provisions section of the Parcel Contract appendix.
- (4) A Parcel Contract cannot be modified to change a standard ALE transaction to a buy-protect-sell transaction.

### **308.7 Completing a Buy-Protect-Sell Transaction**

#### **A. Overview**

- (1) The successful completion of a buy-protect-sell transaction requires both the agricultural land easement acquisition and the transfer of ownership of the parcel to the qualified farmer or rancher to be completed in accordance with the all applicable requirements. These actions are planned and certified as two individual long-term easement practices: one for the long-term protection of land by an agricultural land easement; and one for the transfer of ownership of the parcel to the qualified farmer or rancher. The sequence, timing, and documentation of the NRCS determination and certification that the applicable requirements have been met is specific to the buy-protect-sell transaction type as described in this section. After all required reviews are complete, NRCS will provide written notice of its determination of the buy-protect-sell transaction as compliant or noncompliant.
- (2) Payment of the Federal share may be issued on a reimbursable basis only after the agricultural land easement is closed, the BPS-eligible entity is a holder of the agricultural land easement, and NRCS has determined the applicable easement closing and landownership requirements have been met based on the specific buy-protect-sell transaction type.
- (3) A payment request package, that includes the payment application (e.g., NRCS-CPA-1268) and all required payment request documentation, must be submitted to NRCS, through EAB, for each buy-protect-sell transaction and will be processed following the procedures as set forth in NI 300-306.6 and this NI 300-308.



(4) The eligible entity or the closing agent prepares all IRS Form 1099s.

**B. Verification and Documentation of Transfer of Ownership to the Qualified Farmer or Rancher**

- (1) Step 1.—Generally within 60 days of executing a purchase agreement or equivalent document and no less than 180 days prior to the target date for transferring ownership of the parcel to the qualified farmer or rancher (which for pre-closing transfers must also be at least 180 days prior to the target agricultural land easement closing date), the BPS-eligible entity must provide to NRCS—
  - (i) A copy of a purchase agreement or equivalent document that identifies all persons, legal entities, or Indian Tribes, that will be identified on the evidence of ownership documents and their anticipated ownership shares.
  - (ii) Evidence sufficient for NRCS to determine at least 50 percent of the ownership of the parcel will be held by persons, legal entities, or Indian Tribes that are farmers or ranchers, including:
    - Evidence of farmer or rancher status for each prospective landowner as identified in section 308.4(B)(3).
    - A list of each prospective landowner that does not meet the farmer or rancher criteria.
  - (iii) A copy of the appraisal used to determine the agricultural value of the parcel, if not previously provided.
  - (iv) A copy of the form of the deed that will be used to transfer fee title ownership, if different from previous submissions.
  - (v) Evidence of the original purchase price the BPS-eligible entity paid for the parcel, if not previously provided.
  - (vi) A completed “Transfer of Ownership Costs Summary Statement” (Form NRCS-CPA-1269) marked “Estimate” and signed by the BPS-eligible entity and the prospective landowners and including all required supporting documents.
- (2) Step 2.—NRCS, through the EAB, must review and determine based on the information provided, whether the transfer of ownership requirements will be met, including that:
  - (i) The prospective landowners meet the qualified farmer or rancher requirements as set forth in section 308.4(B);
  - (ii) The determination of agricultural value and the estimated purchase price for the parcel meets the sale at agricultural value requirements as set forth in section 308.4(C) and in the specific terms of the individual Parcel Contract; and
  - (iii) The estimated amounts and types of costs to be included in the sale of the parcel to the qualified farmer or rancher meet the reasonable holding and transaction cost requirements as set forth in section 308.4(D) and in the specific terms of the individual Parcel Contract.

**Note:** For pre-closing transfers, this review of the transfer of ownership information may be prior to or concurrent with the other reviews conducted prior to closing on the agricultural land easement as described in paragraph C below.

- (3) Step 3.—NRCS, through the EAB, will identify and communicate to the BPS-eligible entity any additional information or corrective actions needed for the transfer of ownership requirements to be met.
- (4) Step 4.—After NRCS, through the EAB, has determined the transfer of ownership requirements will be met, the following steps must occur in order:
  - (i) NRCS, through the EAB, must prepare and provide to the BPS-eligible entity an unsigned modification to the Parcel Contract (Form NRCS-CPA-1267-BPS) identifying as landowners the qualified farmers or ranchers and any additional Parcel Contract items to

## Title 300 – National Instruction

be modified at that time (e.g., final easement cost information, final total easement acres, etc.).

- (ii) The BPS-eligible entity must return the Parcel Contract modification executed by the BPS-eligible entity and other required (non-NRCS) parties to the Parcel Contract.
- (iii) NRCS will then execute the Parcel Contract modification and will countersign the Form NRCS-CPA-1269, “Transfer of Ownership Costs Summary Statement” marked “Estimate” and provide a copy of both documents to the BPS-eligible entity.

**Note:** For pre-closing transfers, these two documents must be fully executed by all required parties prior to closing on the agricultural land easement.

- (5) Step 5.—Within 30 days of completion of the transfer of the ownership of the parcel to the qualified farmer or rancher, the BPS-eligible entity must provide NRCS—
  - (i) Recorded evidence of the ownership of the parcel.
  - (ii) A complete and signed “Transfer of Ownership Costs Summary Statement” (Form NRCS-CPA-1269) marked “Final” with all required supporting documentation.
  - (iii) For post-closing transfers, a copy of the title insurance policy issued for the sale of the parcel to the qualified farmer or rancher, and as requested by NRCS, any associated title documents for the period between the initial agricultural land easement conveyance and the buy-protect-sell transaction completion.
- (6) Step 6.—Based on the evidence of the completed transfer of ownership, NRCS, through the EAB, will determine whether the transfer of ownership requirements have been satisfied and will either:
  - (i) Identify and communicate to the BPS-eligible entity any additional information or corrective actions needed; or
  - (ii) Both—
    - Countersign and return the “Transfer of Ownership Costs Summary Statement” (Form NRCS-CPA-1269) marked “Final” certifying that the amounts charged to the qualified farmer or rancher are compliant with the transfer of ownership requirements; and
    - Certify the long-term easement practice for the “Transfer of Ownership to the Qualified Farmer or Rancher” as completed (e.g., easement business tool).

C. The following steps must be completed prior to closing an agricultural land easement under buy-protect-sell transaction and irrespective of an eligible entity’s certification status.

- (1) Step 1.—Not less than 180 days prior to the targeted agricultural land easement closing date, the BPS-eligible entity must provide:
  - (i) The information needed for NRCS to complete applicable determinations for each landowner, eligible entity easement holder, and other interest holder that will hold such interest at the time the agricultural land easement is initially conveyed and ensure each is identified accordingly in the Parcel Contract prior to easement closing based on the specific buy-protect-sell transaction type as set forth in section 308.6(D)(2); and
  - (ii) For pre-closing transfers, the transfer of ownership information identified in paragraph B(1) above.
- (2) Step 2.—Not less than 90 days prior to the targeted agricultural land easement closing date the BPS-eligible entity must send to NRCS—
  - (i) The unexecuted agricultural land easement deed and exhibits thereto, including the legal description or survey.
  - (ii) A hard copy and electronic copy of the agricultural land easement appraisal report.
  - (iii) A copy of the title company’s title commitment and underlying documents.

## Title 300 – National Instruction

- (iv) A summary of the findings or recommendations from the entity review of the recorded and unrecorded exceptions.
  - (v) A draft baseline documentation report.
  - (vi) A copy of the agricultural land easement plan or highly erodible land (HEL) conservation plan, as required pursuant to subpart 440-CPM-528.63.
  - (vii) Any impervious surface waiver requests and supporting documentation.
  - (viii) A map of any existing and proposed building envelopes.
- (3) Step 3.—NRCS must review the materials provided by the eligible entity as described below. Generally, NRCS should complete the review within 45 days of receipt of complete materials from the BPS-eligible entity, except payment eligibility determinations and appraisal reviews which may take additional time. Upon receipt of the required information, NRCS must—
- (i) Review the unexecuted agricultural land easement deed for conformance with ACEP-ALE policy and deed requirements. NRCS will notify the BPS-eligible entity if the agricultural land easement deed is acceptable or will provide a list of changes needed.
  - (ii) Review the legal description or survey that is an exhibit to the deed and ensure it meets the requirements in 440-CPM-528.60(B), including, but not limited to, conformance to the description set forth in the title records and proper representation of the easement area.
  - (iii) Conduct a technical appraisal review in accordance with the requirements set forth in 440-CPM-527-Subpart F, to ensure the ACEP-ALE Federal share is based on the fair market value of the agricultural land easement as determined by an appraisal that meets the requirements set forth in 440-CPM-528.35 and the terms of the ACEP-ALE Program Agreement. NRCS will notify the BPS-eligible entity if the easement appraisal is acceptable or will provide information on the changes needed to meet applicable appraisal standards and NRCS requirements.
  - (iv) Examine the title commitment and
    - For non-certified eligible entities, complete Form NRCS-LTP-23, “Certificate of Use and Consent.”
    - For certified eligible entities, review the Certificate of Use and Consent (NRCS-LTP-23), or substantively similar document provided by the BPS-eligible entity.
  - (v) Consult with the USDA OGC as necessary.
  - (vi) Inspect the parcel and complete a Form NRCS-LTP-27, “Preliminary Certificate of Inspection and Possession.”
  - (vii) Provide the BPS-eligible entity with written notification of title issues that must be remedied, such as—
    - Recorded and unrecorded exceptions to the title that must be removed or subordinated.
    - Leases that must be terminated.
    - Options that must be cancelled.
  - (viii) Review the draft baseline documentation report and, as applicable, the agricultural land easement plan, which may include an HEL conservation plan. Per the baseline documentation requirements as set forth in 440-CPM-528.60(C)) and applicable plan and review requirements as set forth in 440-CPM-528.63, NRCS will notify the BPS-eligible entity if the documents are approved or if changes are needed.
  - (ix) Coordinate with FSA to determine whether the persons, legal entities, or Indian Tribes that are or will be the owners of the parcel at the time of easement closing have submitted the required payment eligibility paperwork and meet the payment eligibility requirements.
  - (x) For pre-closing transfers, conduct remaining transfer of ownership reviews and complete the actions identified in paragraphs (B)(2) and (3) above. As needed, prepare a Parcel

## Title 300 – National Instruction

contract modification and provide the unexecuted copy to the BPS-eligible entity for signature (see section 308.6(D)(2) above).

- (xi) For post-closing transfers, conduct remaining reviews and conclude eligibility and transaction compliance determinations related to the eligible entity that will hold the agricultural land easement and the legal entity that will be the landowner of the parcel at the time the agricultural land easement is initially conveyed (see section 308.2(C) above). As needed, prepare a Parcel contract modification and provide the unexecuted copy to the BPS-eligible entity for signature (see section 308.6(D)(2) above).
- (4) Step 4.—Not less than 30 days prior to the planned easement closing date, the BPS-eligible entity must—
  - (i) Notify NRCS of the planned date to close on the agricultural land easement.
  - (ii) Provide NRCS with documentation of resolution of issues identified by NRCS.
  - (iii) Provide NRCS a signed and completed “Statement to Confirm Matching Funds” on the appropriate Form NRCS-CPA-230 or successor form.
  - (iv) Return any Parcel Contract modifications executed by the BPS-eligible entity and any other required (non-NRCS) parties.
- (5) Step 5.—Prior to the easement closing, NRCS must—
  - (i) Review and sign the “Statement to Confirm Matching Funds” (Forms NRCS- CPA-230 or successor form).
  - (ii) Ensure the HEL conservation plan on any highly erodible cropland meets requirements of 7 CFR Part 12.
  - (iii) Execute the Parcel Contract modification that has been properly executed by the BPS-eligible entity and any other required (non-NRCS) parties.
  - (iv) Complete and sign the “NRCS Approval Letter to Proceed with the ACEP-ALE Acquisition” (see 440-CPM-528, Subpart U, Exhibits).
  - (v) For pre-closing transfers, countersign the “Transfer of Ownership Costs Summary Statement.”
  - (vi) Provide a copy of each of the documents identified in (i)-(v) above to the BPS-eligible entity.

D. The following steps must be completed after closing on an agricultural land easement acquired under any buy-protect-sell transaction type.

- (1) Step 1.—Immediately following closing of the agricultural land easement, the BPS- eligible entity must ensure that the closing agent—
  - (i) Issues a policy of title insurance on a standard ALTA owner’s policy for at least the full amount of the agricultural land easement purchase price (which must be at least the amount of the Federal share) as of the time and date of the recording of the agricultural land easement deed, and:
    - For pre-closing transfers, the title policy must identify the BPS-eligible entity as the insured and the qualified farmer or rancher as the landowner.
    - For post-closing transfers, the title policy issued at the time the easement is initially conveyed, must:
      - For an interim easement holder scenario, identify the approved eligible entity interim easement holder as the insured and the BPS-eligible entity as the landowner.
      - For an interim landowner scenario, identify the BPS-eligible entity easement holder as the insured and the approved interim legal entity landowner as the landowner.
  - (ii) Records or files the agricultural land easement deed in the office where local land records are officially recorded and stored in that State (e.g., county registrar of land records,

county or town clerk land records office, etc.) within 5 business days of conveyance of the agricultural land easement.

(iii) Delivers the following to the BPS-eligible entity:

- A statement covering the agreed upon easement closing costs for the agricultural land easement transaction.
- The original policy of title insurance on the standard ALTA owner's policy form.
- The original and one copy of executed settlement statements.
- Recorder's certified copies of the agricultural land easement deed and clearance documents, including subordination agreements.
- IRS Form 1099 reporting information.

(2) Step 2.—Within 30 days of recordation of the agricultural land easement the BPS-eligible entity must provide NRCS a copy of the—

- (i) Recorded agricultural land easement deed and clearance documents, including subordination agreements.
- (ii) Policy of title insurance for the conveyance of the agricultural land easement.

(3) Step 3.—The remaining actions required to successfully complete the buy-protect-sell transaction and issue payment of the Federal share must be completed in accordance with the procedures applicable to the specific buy-protect-sell transaction type as set forth in paragraph (E), (F), or (G) below.

E. Pre-closing Transfers.—The remaining steps must be completed after closing on an agricultural land easement under a pre-closing transfer buy-protect-sell transaction.

(1) Step 1.—After the agricultural land easement has closed the BPS-eligible entity may request payment of the Federal share by submitting to NRCS, through EAB—

- (i) A completed and signed payment request package, including a payment application (e.g., NRCS-CPA-1268) and all required documentation as identified in the ALE-agreement and Parcel Contract.
- (ii) All evidence not previously provided of the completed transfer of ownership of the parcel to the qualified farmer or rancher, including the items identified in paragraph (B)(5) above.

(2) Step 2.—Upon receipt of a completed and signed payment request package, NRCS, through EAB, must complete the following reviews and notify the BPS-eligible entity of any additional information or corrective actions needed—

- (i) Review the payment request in accordance with the most current easement internal controls policy and upload the required information into the appropriate business tools.
- (ii) Ensure the recorded agricultural land easement deed contains the approved language and the BPS-eligible entity is a holder (grantee) of the agricultural land easement.
- (iii) Verify ownership of the parcel was transferred to the identified qualified farmer or rancher and meets the applicable transfer of ownership requirements as set forth in paragraph (B) above.
- (iv) Verify that the eligible entity easement holder and landowner information is correctly identified in the Parcel Contract.
- (v) Verify that the final policy of title insurance for the conveyance of the agricultural land easement contains only those exceptions approved by NRCS and the BPS-eligible entity and identifies the BPS-eligible entity as the insured and the qualified farmer or rancher as the fee owner.

(3) Step 3.—Following receipt and review of any remaining items from the BPS-eligible entity and upon determination by NRCS, through EAB, that the entire buy-protect-sell transaction has been successfully completed, NRCS must—

## Title 300 – National Instruction

- (i) Complete steps to process payment based on applicable fiscal year payment procedures. Prompt Payment Act interest is not applicable to NRCS-funded programs.
- (ii) If not previously provided, countersign and return the “Transfer of Ownership Costs Summary Statement” (Form NRCS-CPA-1269) marked “Final”.
- (iii) Certify the long-term protection of land practice (e.g., permanent Easement or maximum duration under State law) as completed and, if not previously certified, the “Transfer of Ownership to the Qualified Farmer or Rancher” practice as completed.
- (iv) Provide written notification to the BPS-eligible entity of successful completion of the buy-protect-sell transaction.

F. Post-closing Transfers under an Interim Easement Holder Scenario.—The remaining steps must be completed after closing on an agricultural land easement with an interim easement holder.

- (1) Step 1.—Following receipt of the recorded agricultural land easement deed and the policy of title insurance issued at time of easement closing (generally within 90 days), NRCS, through EAB, must—
  - (i) Ensure the recorded agricultural land easement deed contains the approved language;
  - (ii) Ensure the title insurance policy for the conveyance of the agricultural land easement contains only those exceptions approved by NRCS and the BPS-eligible entity and identifies the approved eligible entity interim easement holder as the insured and the BPS-eligible entity as the landowner; and
  - (iii) Notify the BPS-eligible entity of any issues identified or corrective actions needed with respect to the initial conveyance of the agricultural land easement.
- (2) Step 2.—The BPS-eligible entity and NRCS, through EAB, must—
  - (i) Complete the required actions as set forth in Steps 1 through 6 of paragraph B above to verify and document that the transfer of ownership requirements have been met within the required timeframes as set forth in section 308.4(E) and consistent with terms of the Parcel Contract.
  - (ii) Execute a modification to the Parcel Contract as set forth in 308.6(D)(3).
- (3) Step 3.—Following the successful completion of the transfer of ownership of the parcel to the qualified farmer or rancher, the BPS-eligible entity may request payment of the Federal share by submitting to NRCS, through EAB—
  - (i) A completed and signed payment request package, including a payment application (e.g., NRCS-CPA-1268) and all required documentation as identified in the ALE-agreement and Parcel Contract.
  - (ii) The recorded document identifying the BPS-eligible entity as a holder of the agricultural land easement such as a transfer or assignment of easement or amended easement deed.
  - (iii) An owner’s policy of title insurance for the sale of the parcel to the qualified farmer or rancher, and as requested by NRCS, any associated title documents for the period between the initial conveyance of the agricultural land easement and the completion of the buy-protect-sell transaction.
- (4) Step 4.— Upon receipt of a completed and signed payment request package, NRCS, through EAB, must complete the following reviews and notify the BPS-eligible entity of any additional information or corrective actions needed—
  - (i) Review of the payment request in accordance with the most current easement internal controls policy and upload the required information into the appropriate business tools.
  - (ii) Review the recorded documents, title insurance policies, and any associated documents provided to verify the recorded agricultural land easement is appropriately held and identified as an encumbrance to the title and that there are no unacceptable title issues or exceptions.

## Title 300 – National Instruction

- (5) Step 5.—Following receipt and review of any remaining items from the BPS-eligible entity and upon determination by NRCS, through EAB, that the entire buy-protect-sell transaction has been successfully completed, NRCS must—
- (i) Complete steps to process payment based on applicable fiscal year payment procedures. Prompt Payment Act interest is not applicable to NRCS-funded programs.
  - (ii) Certify the long-term protection of land practice (e.g., permanent Easement or maximum duration under State law) as completed and if not previously certified, the “Transfer of Ownership to the Qualified Farmer or Rancher” practice as completed.
  - (iii) Record in the land records the NRCS notice of its determination that the buy-protect-sell transaction is compliant with all applicable requirements.

G. Post-closing Transfers under an Interim Landowner Scenario.—The remaining steps must be completed after closing on an agricultural land easement with an interim landowner.

- (1) Step 1.—After the agricultural land easement has closed, the BPS-eligible entity may request payment of the Federal share by submitting to NRCS, through EAB, a completed and signed payment request package, including a payment application (e.g., NRCS-CPA-1268) and all required documentation, as identified in the ALE-agreement and Parcel Contract.
- (2) Step 2.—Upon receipt of a completed and signed payment request package, NRCS, through EAB, must complete the following reviews and notify the BPS-eligible entity of any additional information or corrective actions needed—
  - (i) Review the payment request in accordance with the most current easement internal controls policy and upload the required information into the appropriate business tools.
  - (ii) Ensure the recorded agricultural land easement deed contains the approved language and the BPS-eligible entity is a holder (grantee) of the agricultural land easement.
  - (iii) Ensure the policy of title insurance for the conveyance of the agricultural land easement contains only those exceptions approved by NRCS and the eligible entity and identifies the BPS-eligible entity as the insured and the approved legal entity serving as the interim landowner as the owner of the parcel.
  - (iv) Verify the eligible entity easement holder and landowner information is correctly identified in the Parcel Contract
- (3) Step 3.—Following receipt and review of any remaining items from the BPS-eligible entity related to the initial conveyance of the agricultural land easement and upon determination by NRCS, through EAB, that the agricultural land easement has been acquired in accordance with all applicable requirements, NRCS must—
  - (i) Certify the long-term protection of land practice (e.g., permanent Easement or maximum duration under State law) as completed.
  - (ii) Complete steps to process payment based on applicable fiscal year payment procedures. Prompt Payment Act interest is not applicable to NRCS-funded programs.
- (4) Step 4.—The BPS-eligible entity must transfer ownership of the parcel subject to the agricultural land easement to the qualified farmer or rancher within the required timeframes as set forth in section 308.4(E), consistent with terms of the Parcel Contract. To verify and document that the transfer of ownership requirements have been met—
  - (i) The BPS-eligible entity and NRCS, through EAB, must complete the required actions as set forth in Steps 1 through 6 of paragraph B above and must execute a modification to the Parcel Contract as set forth in 308.6(D)(3).
  - (ii) NRCS, through EAB, must review the recorded documents, title insurance policies, and any associated documents to verify the recorded agricultural land easement is appropriately held and identified as an encumbrance to the title and that there are no unacceptable title issues or exceptions.
  - (iii) NRCS, through EAB must communicate to the BPS-eligible entity any issues identified or corrective actions needed and the timeframe for completion.

- (iv) The BPS-eligible entity, must provide to NRCS any additional information and complete any required corrective actions within the timeframes provided.
- (5) Step 5.—Following receipt and review of any remaining items from the BPS-eligible entity and upon determination by NRCS, through EAB, that the entire buy-protect-sell transaction has been successfully completed, NRCS must:
  - (i) Certify the long-term protection of land practice (e.g., permanent Easement or maximum duration under State law) as completed and if not previously certified, the “Transfer of Ownership to the Qualified Farmer or Rancher” practice as completed.
  - (ii) Record in the land records the NRCS notice of its determination that the buy-protect-sell transaction is compliant with all applicable requirements.

**H. Repayments for ALE-agreement Violation or Overpayment**

- (1) In the event that NRCS, through the EAB, determines that repayment of the Federal share is required, EAB will notify the State conservationist and the EPD director and initiate the process for obtaining such repayment. If a buy-protect-sell transaction is not completed pursuant to and in compliance with the requirements set forth in the ACEP-ALE Program Agreement and the associated Parcel Contract, as determined by NRCS, the BPS-eligible entity must repay to NRCS the entirety of the Federal share provided.
- (2) The NRCS will notify the BPS-eligible entity in writing of the amount due, specifying the exact contract violation or the extent of the overpayment. The notification should advise the BPS-eligible entity that they will receive a formal bill from the National Financial Center (NFC) with information on where to send the payment. The bill should be received in approximately 2 weeks. The FPAC-BC finance staff creates a bill in Internet Billing (IBIL) that provides the necessary information for NFC to produce the actual hardcopy bill that is mailed to the eligible entity.
- (3) For post-closing transfers, if after the initial conveyance of the agricultural land easement, the remainder of the buy-protect-sell transaction is not completed in compliance with the applicable requirements, including the transfer of ownership of the parcel to the qualified farmer or rancher, NRCS will document its determination that the buy-protect-sell transaction is not compliant will record in the land records a quitclaim to divest the United States of its rights and interest in the agricultural land easement.

**308.8 Maintaining Official Case Files and Official Electronic Records in the Easement Business Tools**

- A. The requirements for the entry, upload, and maintenance of electronic information and files in the appropriate easement business tools and databases are provided in Exhibit H to this NI.
- B. The following materials must be maintained in the ACEP-ALE case file kept in a fireproof file at the NRCS State office:
  - (1) All items listed in 440-CPM-528.90(B).
  - (2) A copy of the NRCS-CPA-41A and the NRCS-CPA-41A Buy-Protect-Sell Transaction Supplement
  - (3) A copy of the recorded deed identifying the BPS-eligible entity as the fee title owner of the parcel and as applicable, the valid purchase agreement and sale agreement provided at the time of application (see 308.2(B)(3)(ii)).
  - (4) Evidence of the original purchase price paid by the eligible entity for the parcel.
  - (5) A copy of all the documents that comprise the Parcel Contract, including the NRCS-CPA-1265-BPS, NRCS-CPA-1265-BPS-Appendix, the NRCS-CPA-1266-BPS, each subsequently executed NRCS-CPA-1267-BPS.



## Title 300 – National Instruction

- (6) A copy of the appraisal used to determine agricultural value (if other than the same appraisal used for the ACEP-ALE acquisition).
- (7) As applicable, a copy of the technical or administrative review of the appraisal used to determine agricultural value.
- (8) A copy of the recorded deed identifying the qualified farmer or rancher as the owner of the parcel.
- (9) The final, fully executed NRCS-CPA-1269, “Transfer of Ownership Costs Summary Statement” and all documentation submitted to support such costs.
- (10) The fully executed NRCS-CPA-1268, “Easement Payment Application” and all documents provided in the payment request package.
- (11) The final title insurance policy identifying the BPS-eligible entity as the insured and the qualified farmer or rancher as the landowner.
- (12) For post-closing transfers, as applicable, documents recorded subsequent to the initial conveyance of the agricultural land easement that identify the BPS-eligible entity as a holder of the agricultural land easement.

C. The following materials must be retained in the ACEP-ALE case file (fireproof file is at the State’s discretion) at the NRCS State office:

- (1) All items listed in 440-CPM-528.90(C).
- (2) Evidence used to support the determination of land eligibility determination as set forth in 308.2(B) and a copy of the written determination of eligibility for a buy-protect-sell transaction provide by EAB.
- (3) For post-closing transfers:
  - (i) Documentation used to support the determination of legal conformance of the post-closing transfer transaction as set forth in 308.2(C) and a copy of written determinations provided by OGC or EAB.
  - (ii) A copy of any agreements and other materials that set forth and govern the roles, responsibilities, and relationships between parties involved in the buy-protect-sell transaction, including but not limited to, the eligible entity agricultural land easement holder and the legal entity landowner of the parcel.
  - (iii) A copy of the regular updates provided to NRCS regarding the status of securing the transfer of ownership to the qualified farmer or rancher.

### 308.9 Delegations

A. The State conservationist has delegated authority to:

- (1) Develop, in consultation with the State technical committee, State-specific transition ownership condition categories as set forth in 308.2(B)(1)(iv).
- (2) Review and provide a written recommendation for approval to the EPD director or a written determination of denial to the BPS-eligible entity of the BPS-eligible entity request for a waiver to allow land owned by a BPS-eligible entity for more than 3 years and less than 7 years to be considered for enrollment under a pre-closing transfer buy-protect-sell transaction as set forth in 308.2(B)(3)(b). Land owned by the BPS-eligible entity for more than 7 years is not eligible for a buy-protect-sell transaction.
- (3) Review and provide written authorization or denial of the BPS-eligible entity request for a single extension of up to 90-days to complete their purchase of the parcel within 12 months of the date NRCS originally executed the Parcel Contract as set forth in 308.2(B)(3)(ii).
- (4) Following receipt of written notification of eligibility from EAB, select for funding an eligible application for a buy-protect-sell transaction.

## Title 300 – National Instruction

- (5) Execute on behalf of NRCS, the documents that comprise and are used to administer the Parcel Contract for a buy-protect-sell transaction, including:
    - (i) Form NRCS-CPA-1265-BPS, “ACEP-ALE Parcel Cost-Share Contract for a Buy-Protect-Sell Transaction.”
    - (ii) NRCS-CPA-1265-BPS-Appendix, “Appendix to the Form NRCS-CPA-1265-BPS ACEP-ALE Parcel Cost-Share Contract for a Buy-Protect-Sell Transaction.”
    - (iii) Form NRCS-CPA-1266-BPS, “Schedule of Acquisition for Easements Through a Buy-Protect-Sell Transaction.”
    - (iv) Form NRCS-CPA-1267-BPS, “Modification of the Schedule of Acquisition for Easements Through a Buy-Protect-Sell Transaction.”
    - (v) Form NRCS-CPA-1268, “Conservation Activity Approval and Payment Application for Acquisition of Easements” as the NRCS Approving Official.
    - (vi) NRCS-CPA-230G, “Statement to Confirm Matching Funds For ACEP-ALE Enrollments through a Buy-Protect-Sell Transaction, 2018 Farm Bill (Statement to Confirm Matching Funds for a Buy-Protect-Sell Transaction).”
    - (vii) NRCS-CPA-1269, “Transfer of Ownership Costs Summary Statement.”
  - (6) Delegate, in writing, to the assistant State conservationist with responsibility for easement programs the authority to execute the Parcel Contract forms listed in (5)(iv)–(vii) above. All other items listed in this paragraph (A) may not be further delegated.
- B. The EPD director has delegated authority to:
- (1) Authorize or deny in writing a request for a waiver recommended for approval by the State conservationist to allow land owned by a BPS-eligible entity for more than 3 years and less than 7 years to be considered for enrollment under a pre-closing transfer buy-protect-sell transaction as set forth in 308.2(B)(3).
  - (2) Authorize or deny in writing and in consultation with the State conservationist, a BPS-eligible entity request for an extension of up to 12 months to the 3 year deadline to transfer ownership of the parcel subject to an agricultural land easement to the qualified farmer or rancher under a post-closing transfer as set forth in 308.4(E)(2).
  - (3) Authorize or deny a request to conduct a buy-protect-sell transaction subject to an ACEP-ALE cooperative agreement rather than an ACEP-ALE Program Agreement as set forth in 308.5(A).
  - (4) These authorities may not be further delegated.
- C. The EAB Branch Chief has delegated authority to:
- (1) Complete the final determination of eligibility for all buy-protect-sell applications submitted by the State as potentially eligible as set forth in 308.3 and provide written determination to the State conservationist.
  - (2) For eligible applications selected for funding by the State conservationist, conduct the activities required administer the buy-protect-sell transaction and determine and document compliance of the buy-protect-sell transaction with all requirements as set forth in this NI. Coordinate and correspond with the State conservationist and staff and the BPS-eligible entity and other parties to the Parcel Contract.
  - (3) Make the final determination of compliance for the entire buy-protect-sell transaction and the NRCS determination of buy-protect-sell transaction compliance or noncompliance, and for post-closing transfers, ensure such determination is appropriately documented in the land records. This authority may not be further delegated.
  - (4) Execute on behalf of NRCS, the following documents:
    - (i) Form NRCS-CPA-1267-BPS, “Modification of the Schedule of Acquisition for Easements Through a Buy-Protect-Sell Transaction” for modification of items that do not affect the amount of the Federal share obligated to the Parcel Contract.

## Title 300 – National Instruction

- (ii) Form NRCS-CPA-1268, “Conservation Activity Approval and Payment Application for Acquisition of Easements” as the NRCS Reviewing Official.
  - (iii) NRCS-CPA-230G, “Statement to Confirm Matching Funds For ACEP-ALE Enrollments through a Buy-Protect-Sell Transaction, 2018 Farm Bill (Statement to Confirm Matching Funds for a Buy-Protect-Sell Transaction).
  - (iv) NRCS-CPA-1269, “Transfer of Ownership Costs Summary Statement”
  - (v) The “NRCS Approval Letter to Proceed with the ACEP-ALE Acquisition”
- (5) Delegate, in writing, to the EAB Team Leader the authority to conduct the activities identified in this paragraph (B) that are not excluded from further delegations.

### **308.10 Exhibits**

- A. NRCS-CPA-41A-BPS Supplement, “Buy-Protect-Sell Transaction Supplement to the Parcel Sheet”
- B. NRCS-CPA-1265-BPS, “ACEP-ALE Parcel Cost-Share Contract for a Buy-Protect-Sell Transaction”
- C. NRCS-CPA-1265-BPS-Appendix, “Appendix to the Form NRCS-CPA-1265-BPS ACEP-ALE Parcel Cost-Share Contract for a Buy-Protect-Sell Transaction”
- D. Form NRCS-CPA-1266-BPS, “Schedule of Acquisition for Easements Through a Buy-Protect-Sell Transaction”
- E. Form NRCS-CPA-1267-BPS, “Modification of the Schedule of Acquisition for Easements Through a Buy-Protect-Sell Transaction”
- F. NRCS-CPA-230G, “Statement to Confirm Matching Funds For ACEP-ALE Enrollments through a Buy-Protect-Sell Transaction, 2018 Farm Bill (Statement to Confirm Matching Funds for a Buy-Protect-Sell Transaction)
- G. NRCS-CPA-1269, “Transfer of Ownership Costs Summary Statement”