

## Part 531 – Regional Conservation Partnership Program Manual

### Subpart E – Supplemental Agreements

#### 531.40 General

A. This subpart provides policy related to the development and administration of supplemental agreements (SAs) with eligible partners. An SA is a legal document between the NRCS and an eligible lead or nonlead partner that provides funding to implement eligible activities that support an executed Programmatic Partnership Agreement (PPA).

B. When NRCS cannot deliver its RCPP assistance to producers solely through program (producer) contracts between NRCS and eligible producers, NRCS may enter into SAs with an eligible partner to provide technical assistance (TA) or to assist producers with implementation of eligible activities in the project area consistent with the associated PPA, applicable notice of funding opportunity (NFO), and program policy.

C. SAs are managed by:

- (1) Fund type (financial assistance (FA) or technical assistance (TA));
- (2) Regional Conservation Partnership Program (RCPP) component (Alternative Funding Arrangements (AFAs) vs. Classic); and
- (3) RCPP activity type (TA-Implementation (TA-I), TA-Enhancement (TA-E), FA for easement due diligence, land management (LM), rental, entity-held easement acquisition, and watershed/public works activity).

D. SA types include:

- (1) Type I: TA and FA for easement due diligence. See sections 531.41 and 531.43 below.
- (2) Type II: FA for LM, Rental and Watersheds/Public Works (Classic projects only).
- (3) Type III: FA AFA (AFA projects only). See section 531.43 below.
- (4) Type IV: RCPP Program Agreement for Entity Held Easements (AFA and Classic). See section 531.45 below.

E. Each SA type has its own specific requirements. Refer to the following for additional guidance:

- (1) For type I, II, and III SAs, see National Instruction (NI) 440-315, “Guidance for Regional Conservation Partnership Program (RCPP) Negotiated Supplemental Agreements,” for detailed guidance for planning, negotiating, executing, and managing such agreements.
- (2) For type IV SAs, refer to guidance published by NRCS National headquarters (NHQ).

**Note:** Refer to applicable NFOs for details on allowable expenses and activity limits.

F. General requirements for SAs include:

- (1) Are available in projects when the PPA deliverables identify SA as the contract type for one or more deliverable;
- (2) May require ranking or competition, as described in the applicable PPA activity exhibit(s);
- (3) Are negotiated between NRCS and awardee partner and subject to the terms of the PPA, SA template, and program authorities. SAs entered into with nonlead partners do not necessarily require lead partner approval;
- (4) Will be managed according to NRCS-developed SA agreement requirements; and
- (5) Are to be of limited duration to increase the likelihood that conservation benefits are generated during the life of an RCPP project.

G. The PPA between NRCS and a lead partner will establish the general terms and conditions of any SAs that NRCS may enter into with lead or nonlead partners. An SA must be consistent with the overarching PPA it supports.

H. When NRCS enters into an SA with an eligible partner, they are referred to as the SA awardee partner. Awardee partners may include lead partner, collaborating (non-lead) partners with specified roles in a PPA, or other eligible partner entities willing and able to support eligible project activities.

**Note:** The number of SAs will vary by project. There is no limit on how many SAs a PPA can support, and some PPAs may not have any SAs.

I. NRCS funding provided through an SA must support RCPP-funded FA applications or contracts or, in the case of TA-E, eligible project costs per applicable NFO.

J. The PPA establishes budget amounts for TA-I, TA-E, and FA activities, and SAs can be used to obligate none, some, or all of the funding associated with these activities. At the time an SA is initiated in the NRCS Programs Portal, the PPA budget limits new obligations to unobligated funds remaining within the RCPP fund, activity, and contract type.

K. RCPP funds for SAs are managed at the State level. RCPP allocations are distributed by State, project, and by fund type to States as identified in PPA table of deliverables. NRCS allowance holders are responsible for SA negotiations associated with their State’s allocations. See subpart I, “Allocating and Managing Funds,” of this manual for additional guidance.

**Note:** SA awards are not guaranteed by PPA negotiation or execution. Each SA will be negotiated and approved only if NRCS determines that the need for an SA is defensible based on agency assessment of applicable factors, including but not limited to, program authorities and policies, project scope and needs, available funding, partner qualifications, and defensibility of proposed payment methodologies.

**Note:** SA obligations are typically scheduled in the PPA to support known need for eligible activities. For instance, it may be practical when a partner has a detailed project management plan covering the term of a PPA, to negotiate an SA for all TA-E in a project in the same year the PPA is negotiated. However, this would not be the case for TA-I where until producer interest is known, TA-I needs are unknown.

## 531.41 SA Deliverables: Fund and Activity Types

A. Technical Assistance.—RCPP partner TA is managed as either TA-I or TA-E. Eligible TA tasks in each type are identified in the applicable NFO and summarized below:

### (1) TA-I

#### (i) Activity types for TA-I include:

- RTIx-0001 – Pre-Application Activity

**Examples:** Assisting interested producers in establishing eligibility, completing required forms, or project specific work related to development of ranking tools.

**Note:** Excludes project area “inventories,” outreach, and education which are TA-E or partner contribution tasks.

- RTIx-0002 – Planning on FA Applications or Contracts

**Examples:** Resource inventories or other planning activities which would be NRCS responsibilities in covered programs (this includes site-specific work to support ranking evaluation or conservation planning). SA technical requirements must detail work product requirements and fulfill or support NRCS activity standards.

- RTIx-0003 – Design on FA Applications or Contracts

**Examples:** Engineering or management practice designs to support funded activity management. SA technical requirements must have specific detailed work product requirements and support FA implementation per NRCS practice standards.

- RTIx-0004 – Installation (TA) on FA Applications or Contracts

**Examples:** Assistance to producer or partner during contract implementation as typically required of NRCS to ensure FA is implemented per contract terms.

- RTIx-0005 – Checkout on FA Applications or Contracts

**Examples:** Review of records, final measurements and inspections, preparations of as-builts, practice certifications, and other documents.

**Note:** Practice certification and checkout requires appropriate job approval authority which may require more substantial NRCS staff involvement than other TA-I activities.

- RTIx-0006 – Atypical Post-Application (TA) Services

**Examples:** Classic TA awarded to a partner to fulfill NRCS post-closing monitoring responsibilities on U.S. held easements.

- RTIx-0007 – Eligible Third-Party (TA) Contract Management

**Example:** Awardee partner time associated with managing subcontractor contracts to provide services eligible under one of the TA-I activities above.

**Note:** This is contract management time only, not a vehicle for lumping contracting costs.

- (ii) TA-I may be budgeted only to support eligible RCPP FA activities in a PPA, consistent with the PPA budget.
- (iii) NRCS may only proceed with partner TA-I SA awards when available TA in the PPA budget supports it, and the partner has demonstrated the capability to utilize TA-I as necessary to deliver RCPP funded FA.

Partners do not need to be registered technical service providers. However, they must deliver quality technical assistance to support FA delivery consistent with NRCS requirements, including NRCS planning procedures and practice standards, or NRCS approved alternatives.

(2) TA-E

- (i) TA-E is available for partner-led activities directly related to management and enhancement of an approved RCPP project, subject to programmatic requirements, including but not limited to, limits described in the NFO, PPA, and guidance in this subpart.
- (ii) TA-E funds are only available to partners.
- (iii) When NRCS determines that TA-I allocation exceeds project needs and the allocation did not include maximum TA-E funding established in the NFO, neither a waiver nor a new allocation is required to support conversion of TA-I to TA-E if the total TA-E does not exceed the TA-E cap set in the applicable NFO.
- (iv) Eligible TA-E tasks are more variable than TA-I tasks. States and partners should select the most applicable TA-E activities descriptions during PPA and SAs negotiations. Refer to the NFO for TA-E examples.
- (v) Activity types for TA-E include—
  - RTEX-0001 – Project Management

- RTEEx-0002 – Communications and Coordination
- RTEEx-0003 – Outreach and Education
- RTEEx-0004 – Outcome Assessment
- RTEEx-0005 – Conservation Innovation
- RTEEx-0006 – Other Eligible Purposes

**Note:** RCPP TA-I and TA-E deliverables are contracted and reported by TA activity type.

**Note:** NRCS retains authority for ensuring that negotiated TA-I and TA-E tasks are categorized into the most applicable TA practice, scenario, and Budget Object Code category as applicable.

B. Financial Assistance.—NRCS may provide FA funds under an SA based on eligibility, evaluation, and selection criteria developed by NRCS if the SA is:

- (1) To provide the Federal share of easement value to facilitate the conveyance of an easement to an eligible entity by an eligible producer;
- (2) To implement an eligible activity that is available under 7 CFR Part 622, except for the Watershed Rehabilitation Program set forth in 16 U.S.C. Section 1012 (Type II); or
- (3) Other situations when a program contract requires the integration of an SA to facilitate the implementation of an eligible activity, as determined by NRCS (Type I–III).

C. Valuation Methods and Technical Requirements

SA valuation methods and technical requirements must be carefully negotiated and documented during SA development as applicable. See NI 440-315 and NI 440-316 “Guidance for Regional Conservation Partnership Program (RCPP) Programmatic Partnership Agreements,” for additional guidance.

## 531.42 SA Negotiation, Development, and Management

A. State conservationists (STCs) are responsible for managing SAs. STCs may delegate SA management responsibilities to NRCS staff. Delegations must be in writing and specify which responsibilities are being delegated. See NI 440-315 for additional guidance on roles for managing SAs, and subpart U, exhibit 531.203E, “RCPP PPA and SA Delegation of Authority Worksheet,” of this manual for optional worksheet to document delegations.

B. Agreement Negotiation

- (1) Type I-III SAs are negotiated form-based agreements. See NI 440-315 for additional guidance on SA forms and negotiating SAs.
- (2) In addition to the SA itself, each negotiated SA includes the following attachments:
  - (i) Attachment 1, Deliverables (NRCS-CPA-1273-SA[type]-A1)
  - (ii) Attachment 2, Payment Eligibility (NRCS-CPA-1273-SA[type]-A2)
  - (iii) Attachment 3, Confidentiality (NRCS-CPA-1273-SA[type]-A3)
  - (iv) Attachment 4, General Terms and Conditions (NRCS-CPA-1273-SA[type]-A4)
  - (v) Attachment 5, Practices and Specifications (NRCS-CPA-1273-SA[type]-A5)
- (3) SA template forms and attachments are available on the RCPP Coordinator SharePoint site. Official signed copies of these forms are generated upon conclusion of SA negotiations by the NRCS Programs Portal:
  - (i) RCPP Coordinator SharePoint:  
[https://usdagcc.sharepoint.com/sites/nrcs\\_programs/SharePoint/RCPP/Coordinator\\_Resources](https://usdagcc.sharepoint.com/sites/nrcs_programs/SharePoint/RCPP/Coordinator_Resources)
  - (ii) NRCS Program Portal: <https://nrcs-sites.secure.force.com/>

### C. Agreement Development

- (1) Term of an SA must not exceed the term of the associated PPA unless NRCS determines that the duration of the SA should extend beyond the duration of the PPA to ensure appropriate assistance to participating producers or completion of an eligible activity.
- (2) Specific expectations for Type I-III SAs will be negotiated based on available funding, project needs, partner qualifications, unit costs, etc.
- (3) Easements and watershed/public works activity SAs may include “match” or “cost sharing” requirements similar to those required in related covered program awards. If an SA has specific match requirements, the match from other programs or projects may not be counted toward meeting the SA match requirements and must come from non-Federal sources unless otherwise stated in this manual, regulation, or statute. The following applies:
  - (i) Cost-share requirements are included in SA templates and must be documented per SA requirements to support payments.
  - (ii) All required cost-share or matching ratio must be met by the end of the SA agreement period of performance. Some SA types may have additional timing requirements.
- (4) NRCS will incorporate the following into each SA:
  - (i) The procedures required in the event of a determination that the lead partner or nonlead partner is not in compliance with the terms and conditions of the SA;
  - (ii) The consequences for failure to remedy noncompliance, including termination of the SA, requirement to repay any payments received and any interest thereon, forfeiture of any future payments, and applicability of liquidated damages;
  - (iii) The impacts of termination of the SA upon the PPA or any associated program contract;
  - (iv) The availability, if any, of administrative review of NRCS determinations under 7 CFR 1464.40; and
  - (v) Other terms and conditions NRCS determines necessary to ensure the effective delivery of program resources to producers.
- (5) Financial and performance reporting responsibilities

SAs may include reporting requirements as stipulated in the individual SA templates. When required, failure to submit reports may result in suspension or termination of the SA. NRCS may withhold payments if the partner is delinquent in submitting required reports. See SA templates and subpart J, “Payments,” of this manual for additional guidance.

- (6) Payment requirements are included in each SA. As a condition of negotiated SAs, NRCS and a partner negotiate valuation methods and technical requirements for payment based on the agreement deliverables and activities. Specific requirements must be agreed to by NRCS and the partner prior to execution of any SA. Further, these requirements must be fully satisfied to support SA payments.

**Example:** If the SA includes enhancement TA deliverables, such as producer outreach activities, the partner may be required to submit timesheets detailing the actual eligible costs incurred by the partner before NRCS makes payment.

### D. Agreement Management

- (1) NRCS or the partner may request an amendment to an SA. In an amendment, the parties, through mutual written agreement subject to NRCS approval, may reschedule delayed items, change the extent, unit cost, valuation methods of deliverables, or amend other negotiated aspects of deliverables.
- (2) NRCS will only approve SA amendments if the changes are consistent with the applicable NFO, project proposal, executed PPA, and RCPP requirements.
  - (i) Different rules apply to amendments of an SA awarded noncompetitively by NRCS to support PPA implementation rather than an SA awarded based upon competition.

- (ii) Noncompetitively awarded SAs may be amended to further any eligible purpose in the project, subject to PPA terms, deliverables, and budget.
- (iii) Competitively awarded SAs (e.g., Type II SA for LM activities ranked in the Conservation Assessment Ranking Tool) must be managed to ensure that original rankings and scope of the award are maintained.
- (3) RCPP partners must maintain and provide NRCS documentation for work completed and partner costs incurred per the terms of the applicable SA. SA payment eligibility requires compliance with negotiated technical requirements and valuation methods. If these requirements are not met, payment will not be made and NRCS may require partners to take remedial action. If partners are unable to satisfy NRCS's requirements, the PPA or SA may be terminated and NRCS may seek cost recovery of all or part of any payments previously made and assess liquidated damages.

RCPP funds may not be used to reimburse partners for any partner administrative costs, and payments shall be denied if partner's SA payment documentation does not clearly exclude all partner administrative costs. See section 531.86 of this manual for additional guidance related to limitations on administrative costs.

(4) Environmental Review Requirements

- (i) All required national, State, and local permits must be acquired prior to initiation of project activities, if applicable. The PPA and SA must document how these requirements will be met by the partner and communicated to NRCS before or during SA implementation.

**Note:** NRCS and applicants should consider tasks and requirements associated with obtaining necessary permits when establishing an SA scope and timeline.

- (ii) Partner may not commence, and NRCS must not provide RCPP funding for any SA deliverable until the environmental review requirements demonstrating how compliance with National Environmental Policy Act (NEPA) and other Federal, State, and local laws and regulations will be met. NRCS may not approve, or may withdraw, funding for SA or specific deliverables if the agency determines it may result in unacceptable adverse environmental impacts.
  - (iii) Once a PPA is executed, RCPP requires site-specific environmental evaluations (EEs) during the planning phase of each individual FA producer contract or SA to ensure compliance with NEPA, other Federal, State, and local laws and regulations, and NRCS policy. If the EE concludes that available categorical exclusions do not cover proposed actions, NRCS conservation planning processes or conservation practice standards are to be supplemented or replaced with innovative measures. In addition, when watershed/public works activities are included in an RCPP proposal, an environmental assessment and/or environmental impact statement may be required as a condition of obligation and payment within any associated SA.
- (5) Cancellation and Termination
- (i) The awardee partner of an SA may request that NRCS cancel the SA, provided the request is in writing, and includes the reasons for cancellation.
  - (ii) NRCS may cancel an SA if:
    - Justified by the reasons provided by the awardee partner;
    - The cancellation may be justified for circumstances beyond the awardee partner's control which prevent completion of one or more provisions of the PPA, such as a natural disaster or other circumstance in which NRCS may determine that cancellation is in the public interest.
  - (iii) NRCS may terminate an SA if:



- NRCS determines that an amendment of the SA agreement is necessary to comply with applicable law and the awardee partner does not concur with such amendment; or
  - The awardee partner fails to correct noncompliance with the terms of the SA.
- (iv) If the SA includes cost-sharing or match requirements and the awardee partner becomes aware that they may be unable to provide the cost-sharing amount identified in the agreement, they must immediately notify the NRCS. The SA will require amendment or termination if the deficiency cannot be resolved.
- (v) If an SA is canceled or terminated, the awardee partner forfeits all rights to any remaining TA or FA under the PPA, unless work was completed prior to cancellation or termination, or otherwise determined by the NRCS to be within the terms of the PPA and SA.
- (vi) Cancellation or termination of an SA will not affect the validity of the PPA, any other SA, or program contracts entered into with a producer under the PPA, unless NRCS determines that cancellation or termination of the SA negates the validity of the PPA or compromises the agency ability to deliver FA under the PPA.
- (vii) If NRCS terminates an SA due to noncompliance with its terms or conditions, NRCS may seek cost recovery of all or part of any payments previously made and assess liquidated damages.

### **531.43 SA for Alternative Funding Arrangements (Type I or Type III)**

A. NRCS will implement AFAs through SAs.

(1) AFA projects typically require SAs with the lead partner.

(2) If an AFA requires an SA award to a nonlead partner, consult NHQ for additional guidance.

B. The awardee partner will implement eligible activities per SA deliverables and make requests for reimbursement to NRCS. SA payment methods only relate to RCPP FA payments.

C. AFA SAs function like Classic SAs. However, in AFA projects SA and PPA terms are more closely associated than in RCPP Classic projects. Lead partner failure to meet PPA implementation requirements may result in cancellation or termination of the SA. See section 531.42 above, and subpart D, section 531.32 of this manual for additional guidance on cancellation or termination.

### **531.44 SA for Watersheds/Public Works (Type II-III)**

A. Through the watershed/public works component of RCPP, eligible partners may receive FA awards to support implementation of structural works of improvement to address watershed-scale issues on eligible land, similar to projects currently carried out under Public Law 83-566.

B. FA for works of improvement will be awarded through an SA. Under the SA, unlike for other types of RCPP activities, the eligible partners lead the planning, design, and installation of works of improvement.

C. NRCS retains watershed plan and design approval authority consistent with Federal infrastructure projects and identified by NRCS watershed and engineering directives and related Public Law 83-566 policy.

**Note:** Public Law 83-566-like land treatment activities will be funded under land improvement, management, and restoration contracts with the producer rather than watershed/public works SAs.

### 531.45 SA for RCPP Entity-Held Easements (Type IV) AFA and Classic

A. Awards for RCPP entity-held easements are offered through type IV SAs and parcel contracts. These awards require collaboration between NRCS, an eligible entity, and an eligible landowner. See subpart U, section 531.206 exhibits of this manual for easement-related documents included in the RCPP program agreement and RCPP parcel contracts.

- (1) Only eligible entities may apply for and enter into an RCPP program agreement and associated RCPP parcel contracts. Entities must meet eligibility requirements set forth in 7 CFR Section 1464.5(b) and 7 CFR Part 1468 and be authorized to hold conservation easements for the identified purposes.
- (2) The RCPP program agreement and RCPP parcel contracts establish the terms and conditions under which NRCS may provide FA to the eligible entity for their purchase of an RCPP entity-held easement from an eligible landowner.

B. There are no funds obligated under an RCPP program agreement. Rather, NRCS provides FA funds (Federal share for the purchase of the RCPP entity-held easement) through individual RCPP parcel contracts associated with the executed RCPP program agreement.

- (1) The RCPP program agreement is valid for the term of the associated PPA and therefore must not exceed the PPA expiration date. If the PPA term is amended, the term for the RCPP program agreement must also be amended to ensure it does not exceed the life of the PPA.
- (2) An executed RCPP program agreement may have one or more associated individual RCPP parcel contracts. These contracts are executed on an individual easement (parcel) basis similar to the model used in the Agricultural Land Easement component of the Agricultural Conservation Easement Program.
- (3) The RCPP program agreement must be fully executed by all parties prior to NRCS executing any associated individual RCPP parcel contract.
- (4) Individual RCPP parcel contracts may be executed at any time during the life of the RCPP program agreement, subject to the program and funding authorities and limitations applicable in a given fiscal year.

C. An RCPP program agreement defines the roles and responsibilities of the eligible entities that are party to the agreement along with NRCS. It also defines the roles, requirements, and limitations of those legal entities that may be co-holders or third-party right holders of any RCPP entity-held easements acquired by such eligible entities. Additionally, an RCPP program agreement must—

- (1) Identify all eligible entities that will individually or collectively be party to any individual RCPP parcel contracts associated with the RCPP program agreement and hold the RCPP entity-held easement acquired pursuant to the individual RCPP parcel contract.
- (2) Identify all legal entities that may otherwise co-hold (be identified as a grantee) an RCPP entity-held easement that is held by one or more of the eligible entities that are party to the RCPP program agreement.
- (3) Identify all legal entities that may be identified as a third-party right holder (not identified as a grantee) on an RCPP entity-held easement that is held by one or more of the eligible entities that are party to the RCPP program agreement. This must be completed to the extent that the list of such potential third-party right holders is known at the time the RCPP program agreement is originally executed.
- (4) Be executed by an appropriately authorized representative of each entity identified in the RCPP program agreement as an “eligible entity” or as a “co-holder.” Signature of the RCPP program agreement by the legal entities identified as a third-party right holder is optional.

**Note:** For the purposes of RCPP entity-held easements, the terms co-holders and third-party right holders are related strictly to roles of such legal entities in the RCPP conservation



easement deed. See exhibit 1 of the RCPP program agreement for additional guidance on the roles, requirements, and limitations related to eligible entities, co-holders, and third-party right holders.

D. The eligible entity and NRCS may agree to attach an additional exhibit to the RCPP program agreement to further define and clarify roles and responsibilities or other RCPP program agreement-specific provisions. This can be done to the extent such further definitions, clarifications, and provisions do not conflict with RCPP statutory, regulatory, and policy requirements, or the terms and conditions of the associated PPA, RCPP program agreement, or associated individual RCPP parcel contracts.

E. Eligible entities that are party to an RCPP program agreement to implement entity-held easement activities are not subject to the Farm Bill's highly erodible land, wetland compliance, and adjusted gross income requirements. However, all eligible landowners identified in a RCPP parcel contract are subject to these requirements.

F. Prior to obtaining eligible entity signatures and prior to NRCS executing an RCPP program agreement, the State conservationist must receive written approval from the Deputy Chief for Programs or delegate.

- (1) Subject to first receiving written notice from Easement Programs Division that the RCPP program agreement has been approved for execution, the State conservationist has the delegation of authority to execute the RCPP program agreement on behalf of NRCS.
- (2) The authority to execute and enter into the RCPP program agreement may not be delegated below the State conservationist.

G. Clearly stated conservation values are critical to implementation of RCPP entity-held easements and are required for the development and approval of the RCPP program agreement, RCPP parcel contracts, and RCPP conservation easement deeds. The conservation values must be consistent with the conservation benefits and resource concerns in the PPA as determined by NRCS. States must follow requirements set forth in this manual and related agency directives to ensure conservation values are appropriately stated and that the deed terms of the RCPP entity-held easement further the stated conservation values.

H. The eligible entity must ensure RCPP conservation easement deeds satisfy the requirements set forth in the RCPP program agreement. The eligible entity is authorized to use its own terms and conditions in the RCPP conservation easement deeds as long as the deed contains the "RCPP minimum deed terms," as an attachment or incorporated in the deed. NRCS must review all RCPP conservation easement deeds.

I. Enrollment, execution, and administration of individual RCPP parcel contracts and valuation, acquisition, and stewardship of individual RCPP entity-held easements must be conducted pursuant to the requirements set forth in applicable regulations, this manual, 440-CPM-527, "Easement Common Provisions Manual," 440-CPM-528, "Agricultural Conservation Easement Program (ACEP)," the terms of the RCPP program agreement and individual parcel contracts, and other agency directives.