
Title 440 – Conservation Programs Manual

Part 527 – Easement Common Provisions

Subpart I – Program Agreements and Parcel Contracts for Entity-Held Easements

527.80 General

- A. NRCS may provide cost-share assistance to eligible entities for their purchase of conservation easements through an agreement mechanism that uses a combination of a program agreement for entity-held easements and associated individual parcel cost-share contracts under the following programs:
1. Agricultural Conservation Easement Program – Agricultural Land Easement (ACEP-ALE).
 2. 2014 Farm Bill Regional Conservation Partnership Program (RCPP) ACEP-ALE.
 3. 2018 Farm Bill RCPP entity-held easements.

Note: Program agreements authorized under other easement programs or components are not covered under this policy; please refer to the individual program's policy and guidance.

- B. The program agreement provides the framework under which NRCS and the eligible entities will operate. The program agreement identifies all eligible entities that are party to the agreement and identifies the legal entities that may be potential coholders or third-party right holders in any individual entity-held easements.
- C. There are no funds obligated to these program agreements. NRCS provides cost-share assistance through individual parcel contracts associated with the executed program agreement. A program agreement may have one or more associated individual parcel contracts which are executed on an individual easement basis.
- D. NRCS, on behalf of the Commodity Credit Corporation (CCC), enters into a program agreement for eligible entities to acquire entity-held easements on eligible parcels selected for funding. The program agreement must be signed by all required parties prior to NRCS signing an individual parcel contract associated with the program agreement.
- E. NRCS cost-share assistance provided through the parcel contract is limited to financial assistance funds for payment of easement compensation to the eligible entity for the purchase of the conservation easement from the landowner (also referred to as the federal share).

- F. All program agreements and parcel contracts must be administered in accordance with all applicable program regulations, program policy, this subpart, and additional specific guidance provided in national bulletins or instructions. The appropriate versions of the program-specific forms and exhibits must be used as set forth in this subpart and the relevant program policy (see Title 440 Conservation Programs Manual, Part 528 “Agricultural Conservation Easement Program,” and Part 531 “Regional Conservation Partnership Program”).
- G. For 2018 Farm Bill RCPP, a program agreement and its associated parcel contracts are a Type IV supplemental agreement (or successor agreement) to an individual partnership agreement (PA) (or successor agreement) and must also comply with any PPA-specific requirements. A single program agreement may not be used for multiple PPAs.

527.81 Acceptance and Processing of Entity and Parcel Applications

- A. Eligible entities who wish to participate in one of the programs listed in section 527.80(A) to receive NRCS cost-share assistance for the purchase of entity-held easements must first submit the program-specific entity application for an entity-held easement program agreement.
- B. Eligible entities may then request NRCS cost-share assistance for the acquisition of an entity-held easement on an individual parcel by submitting the program-specific parcel application for an entity-held easement. Individual parcel applications may be submitted concurrently with the entity application, following submission of the entity application, or at any time after a program agreement has been executed by all required parties.
 - 1. The program agreement must be executed before any parcel contract associated with such program agreement is executed.
 - 2. The amount of the federal share requested must be stated on the parcel application and must comply with the limitations of the applicable program and easement type.
 - 3. All parcel applications received, regardless of status, must be entered into the appropriate business tool prior to the end of the fiscal year in which the parcel application was submitted.
 - 4. All eligible parcel applications must be entered, planned, and ranked in the appropriate business tools prior to the end of the fiscal year in which the parcel application was submitted.
- C. In accepting applications, states must comply with any program-specific requirements regarding public announcements, application cutoffs, application reviews, eligibility determinations, funding selections, and obligations.
- D. A properly completed and executed entity or parcel application is one that is submitted on the appropriate forms, accompanied by all required supporting documentation, and signed by all required applicants and other required parties. Only executed applications will be considered for approval.

527.82 Program Agreement

- A. Program agreements are comprised of a set of program-specific forms and exhibits that contain the provisions necessary to ensure that program purposes and requirements are met and that the program agreement is implemented in compliance with NRCS authorities.
- B. The program agreement defines the roles and responsibilities of NRCS and of the eligible entities that are party to the agreement, and defines the roles, requirements, and limitations of legal entities that may be coholders or third-party right holders of any conservation easements acquired by the eligible entities. Additionally, the program agreement must:
 - 1. Identify all eligible entities that will individually or collectively be party to any individual parcel contracts associated with the program agreement and will hold the entity-held easement acquired pursuant to the individual parcel contract.
 - 2. Identify all legal entities that may otherwise co-hold (be identified as a grantee) an easement that is held by eligible entities party to the program agreement.
 - 3. Identify all legal entities that may be identified as a third-party right holder (not identified as a grantee) on an easement held by eligible entities party to the program agreement, to the extent that the list of such potential third-party right holders is known at the time the program agreement is originally executed.
 - 4. Be executed by an appropriately authorized representative of each entity that is identified in the program agreement as an eligible entity or as a coholder. Signature of the program agreement by the legal entities identified as a third-party right holder is optional.
- C. Program Agreement Development
 - 1. States must use the published program-specific forms, exhibits, and templates to develop the program agreement. The provisions of the standard program agreement forms and exhibits cannot be changed; however, the eligible entity and NRCS may agree to attach an “Additional agreement provisions” exhibit to further define and clarify roles and responsibilities or other program agreement-specific provisions as long as the exhibit does not conflict with specific program statutory, regulatory, and policy requirements or the terms and conditions of any applicable RCPP PPA, program agreement, or associated parcel contracts.
 - 2. At the time of its execution, each program agreement must include the following required forms and exhibits.
 - a. The appropriate program-specific program agreement document.
 - b. Exhibit 1: The identification (of eligible entities, coholders, third-party rights holders) and signature pages.

- c. Exhibit 2: The most current program-specific appraisal specifications.
 - d. Exhibit 3: A sample copy of the program-specific parcel contract form and exhibits.
- 3. Depending on the program, each program agreement may additionally include the following exhibits.
 - a. (Required) Exhibit 4 to 2018 Farm Bill RCPP entity-held easements: “Conservation values” exhibit identifying the conservation values to be used in the conservation easement deeds and the associated conservation benefits and resource concerns being addressed based on the associated PPA.
 - b. (Optional) Exhibit 4 to ACEP-ALE and RCPP-ACEP-ALE: “Additional agreement provisions” attachment providing additional provisions, including but not limited to identifying additional roles and responsibilities, parameters for substitutions, inclusion of a minimum deed terms addendum, or an NRCS NHQ-approved template deed.
 - c. (Required) Exhibit 5 (for 2018 Farm Bill RCPP alternative funding arrangements (AFA) only): Sets forth the RCPP minimum deed requirements.
 - d. (Optional) “Additional agreement provisions” for 2018 Farm Bill RCPP program agreements: This is the last numbered exhibit after the required exhibits listed above and is similar to the ALE exhibit 4 described above. It is an optional attachment providing additional provisions, including but not limited to identifying additional roles and responsibilities and parameters for substitutions.
- 4. States must submit draft 2018 Farm Bill RCPP program agreements and any ACEP-ALE, including RCPP-ACEP-ALE, program agreements that include an exhibit 4 to the Easement Programs Division (EPD) for review and approval prior to execution.
 - a. To request this approval, states must submit the draft program agreement (including all exhibits and attachments) and the entity application to EPD (mail to: NRCS.ProgramAgreements@usda.gov) in accordance with published guidance.
 - b. ACEP-ALE, including RCPP-ACEP-ALE, program agreements that do not include the optional exhibit 4 do not need to be submitted to EPD for approval prior to execution.
- 5. When ready for signature, including EPD approval for program agreements that include an optional exhibit 4, the program agreement may only be executed by the state conservationist and the authority to execute program agreements may not be further delegated.
- 6. The process for modifications to program agreements is the same as for the original execution of the program agreement.

D. Program Agreement Expiration

1. The program agreement is valid only for the term specified therein. The expiration date must be entered in the program agreement and may not exceed the program-specific limitations.
 - a. For RCPP, the initial term of the program agreement must not exceed the expiration of the associated RCPP PPA. If the term of the RCPP PPA is modified while the program agreement is still active, the program agreement term may be modified but must not exceed the modified expiration date of the associated RCPP PPA. There is no standard expiration date for RCPP program agreements.
 - b. For ACEP-ALE and RCPP-ACEP-ALE, the term of the program agreement must be at least 3 fiscal years and not to exceed 5 fiscal years from the fiscal year of execution for noncertified entities, and at least 5 fiscal years and not to exceed 7 fiscal years for certified entities. The expiration date entered into the program agreement will be September 30 of the appropriate fiscal year based on the eligible entity status and the applicable program agreement length limitations. ACEP-ALE and RCPP-ACEP-ALE program agreements may not be extended.
2. Once a program agreement is executed, individual parcel contracts may be executed at any time during the term of the program agreement, subject to the program and funding authorities and limitations applicable in a given fiscal year.

E. Program Agreement Modifications

1. Once a program agreement is executed, modifications to the program agreement are only allowed for very specific circumstances. If NRCS determines that an amendment is necessary, all parties to the program agreement must authorize the changes and execute the appropriate forms and exhibits associated with the program agreement itself. Situations that may give rise to the need for a program agreement modification include, but are not limited to—
 - a. Update to exhibit 1 to add eligible entities or coholders.

Note: It is not necessary to amend a program agreement to identify additional third-party right holders. The third-party holder of a given easement may be identified on the individual parcel contract.

 - b. Update to include or modify the optional “Additional agreement provisions” exhibit to the program agreement.
 - c. Update to include a deed template, approved by the EPD director, for an ACEP-ALE or RCPP-ACEP-ALE program agreement.
 - d. For 2018 Farm Bill RCPP entity-held easements only:
 - (1) Update exhibit 4 to modify conservation values consistent with the associated RCPP PPA.
 - (2) Extend the term of a program agreement subsequent to a modification to extend the associated RCPP PPA.

2. A program agreement may not be amended to remove an eligible entity, coholder, or third-party right holder.
3. All proposed ACEP-ALE and RCPP-ACEP-ALE program agreement modifications that either amends exhibit 4 or includes a new exhibit 4 must be reviewed and approved by EPD prior to execution as described in section 527.82(C)(4) above. ACEP-ALE and RCPP-ACEP-ALE program agreement modifications that do not amend exhibit 4 or include a new exhibit 4 do not require EPD approval prior to execution.
4. The forms and exhibits required for the program agreement modifications may only be executed by the state conservationist and this authority may not be further delegated.
5. Copies of any executed program agreement modifications must be uploaded into the applicable business tools.

527.83 Entity Roles and Responsibilities

- A. As described in section 527.82 above, the program agreement identifies and defines the roles and responsibilities of the eligible entities along with any legal entities that may be coholders or third-party right holders of any easements acquired by such eligible entities.
- B. Only eligible entities are considered program participants under a program agreement; therefore, the eligible entity must meet all eligibility requirements and responsibilities of program participation as set forth in policy and the terms of the program agreement.
- C. Only the eligible entities and NRCS are parties to the program agreement; however, all coholders must sign the program agreement to acknowledge its terms.
- D. The terms “coholders” and “third-party right holders” are related strictly to roles of such legal entities in a conservation easement deed that is held by an eligible entity. See exhibit 1 of the program agreement for additional information on the roles, requirements, and limitations related to eligible entities, coholders, and third-party right holders.
- E. The program agreement provides an option for an eligible entity to participate either as an independent or dependent eligible entity.
 1. An independent eligible entity is an entity that NRCS has determined meets all program statutory, regulatory, and policy requirements as an eligible entity.
 2. A dependent eligible entity is an entity that NRCS has determined meets all program statutory requirements of an eligible entity but may not meet one or more of the regulatory or policy requirements at the time the program agreement is executed (e.g., does not have a farmland or grassland protection program, does not have the staff capacity to monitor and steward easements).

- F. At least one independent eligible entity must be party to a program agreement and each associated individual parcel contract. A dependent eligible entity may only be party to a program agreement and any associated individual parcel contracts to which an independent eligible entity is also party.
- G. The individual parcel contracts executed pursuant to a program agreement must:
 - 1. Identify and be executed by each eligible entity that is party to such parcel contract. Only those eligible entities that are party to the program agreement may be party to an individual parcel contract associated with that agreement.
 - 2. List each coholder that will be identified in the conservation easement deed acquired pursuant to such parcel contract. An authorized representative of each coholder must sign the appendix of the parcel contract to acknowledge its terms. Only those coholders that are identified in and have signed the program agreement may be identified in an individual parcel contract associated with that agreement.
 - 3. List each third-party right holder that will be identified in the conservation easement deed acquired pursuant to the individual parcel contract.
 - a. A third-party right holder may be identified in an individual parcel contract without being identified in the associated program agreement unless the eligible entity requires such identification in the additional terms of the program agreement.
 - b. The third-party right holder is not required to sign the program agreement or the appendix of an individual parcel contract, unless required by the eligible entity.
 - c. NRCS is not separately identified as a third-party right holder in the program agreement or parcel contract forms.

527.84 Parcel Contracts

- A. Once the program agreement is executed, individual parcel contracts may be executed at any time prior to the expiration of the program agreement, subject to specific program and funding authorities and limitations applicable in a given fiscal year. A parcel contract may not be executed prior to the execution of the associated program agreement.
- B. A parcel contract is entered into on an individual parcel basis, providing for the purchase of one entity-held easement on that individual parcel.
- C. NRCS obligates and provides the cost-share assistance funds for an entity-held easement through an individual parcel contract entered into by NRCS and the eligible entities party to the associated program agreement.
- D. A parcel contract is the contracting document between NRCS and the eligible entities identified therein. States must use the appropriate program-specific parcel contract forms and exhibits. A parcel contract is comprised of:
 - 1. Parcel cost-share contract;

2. Parcel cost-share contract appendix;
 3. Schedule of acquisition and any modifications thereto executed on the program-specific modification to the schedule of acquisitions form; and
 4. The terms and conditions of the program agreement with which the individual parcel contract is associated, incorporated by reference.
- E. Each parcel contract documents the attributes specific to the enrollment and acquisition of an entity-held easement on the individual parcel which are agreed to by the parties to the parcel contract upon its execution. These specific attributes include but are not limited to:
1. The enrollment type or RCPP project type (e.g., general ACEP-ALE, ACEP-ALE grasslands of special environmental significance (GSS), 2018 Farm Bill RCPP classic, or RCPP AFA).
 2. The transaction type, identifying whether the easement will be acquired following—
 - a. Standard transaction procedures, or
 - b. Buy-protect-sell transaction procedures.

Note: A buy-protect-sell transaction must use the program-specific suite of parcel contract forms specific to buy-protect-sell transactions, which are denoted by the “-BPS” at the end of the form name or number.

3. Parcel acreage and location information. A copy of the proposed easement boundary map must be attached to the schedule of acquisition.
4. Conservation easement deed selections.
 - a. For ACEP-ALE and RCPP-ACEP-ALE, the method that will be used to address the NRCS ACEP-ALE deed requirements (including, as applicable, the method that will be used to address minimum deed terms as set forth in the terms of the program agreement).
 - b. For 2018 Farm Bill RCPP entity-held easements, the level of restrictiveness of the conservation easement deed and whether the United States will hold a right of enforcement.
 - c. For all entity-held easement types except ACEP-ALE parcel contracts with certified eligible entities, a copy of the minimum deed terms addendum to be used or a copy of the approved draft easement deed must be attached to the parcel contract at the time it is originally executed. Changes in the deed selections must be approved by NRCS and documented through the execution of a modification to the parcel contract as described in section 527.85 below.
5. Based on the specific program requirements, the easement plan that will be developed, any required or agreed-to components of the plan, and, as applicable, the party responsible for its development.

6. The designation of whether the eligible entity will acquire the easement under the certified or noncertified eligible entity provisions as set forth in the program agreement and the parcel contract.

To select the certified eligible entity provisions, at least one eligible entity that has been certified by NRCS and meets the requirements as an independent eligible entity must be party to the individual parcel contract. The certified entity does not need to be the lead eligible entity on the parcel contract to use the certified eligible entity provisions but must be identified as a holder of the easement.

7. Easement cost information, including the fair market value of the easement, the total requested federal share, and the total non-federal share amount.
 - a. The easement value may be based on a sufficient and defensible estimated easement value detailing how the estimated easement cost was determined or an NRCS-approved appraisal of the subject parcel, an areawide market analysis or survey, or another industry-approved method (alternative valuation) approved by EPD.
 - b. For all entity-held easement types, the final easement value based on an appraisal approved by NRCS, or an areawide market analysis or survey or another industry-approved method (alternative valuation method) approved by NRCS. The final cost-share information must be reflected in the appropriate forms as set forth in section 527.85(8) below.
8. The list of eligible entities that are party to the individual parcel contract and information specific to each listed eligible entity, including payment shares, estimated payment distribution, status of each eligible entity as certified or noncertified (as applicable), and the qualification of the eligible entity as either an independent or dependent eligible entity as described in this subpart.
9. The list of coholders and third-party right holders associated with the individual easement being acquired.
10. The list of landowners that includes ownership share and identifies which landowner is designated as the decision maker.
11. Signatures from the authorized representatives of the eligible entities and coholders on the various parcel contract documents as identified in the terms of such parcel contract.

F. Parcel Contract Expiration

1. For standard transactions, the term of a parcel contract must not exceed the date of March 31 three fiscal years from the fiscal year of execution, with the option for two 12-month extensions upon agreement by all parties through the modification process described in this subpart. Figure 527I-1 illustrates parcel contract expiration date requirements and limitations based on the fiscal year of parcel contract execution.

Figure 527I-1

| Parcel contract execution fiscal year (FY) | Parcel contract expiration date | Parcel contract 1 st 12-month extension date | Parcel contract 2 nd 12-month extension date |
|--|---------------------------------|---|---|
| FY 2023 | March 31, 2026 | March 31, 2027 | March 31, 2028 |
| FY 2024 | March 31, 2027 | March 31, 2028 | March 31, 2029 |
| FY 2025 | March 31, 2028 | March 31, 2029 | March 31, 2030 |

2. For buy-protect-sell transactions, the standard expiration date is September 30 of the fifth fiscal year following the fiscal year the parcel contract is executed and may not be extended except as specified in the terms of a parcel contract for a post-closing transfer buy-protect-sell transaction (see 440 CPM § 528 and NI 300-308 for policy related to buy-protect-sell transactions).
3. A parcel contract executed prior to the expiration of the associated program agreement will survive the expiration of any associated RCPP PPA or program agreement and will remain valid until its own expiration.

G. Parcel Contract Execution and Obligation of Funds

1. Parcel contracts may be entered into and funds obligated at any time during a fiscal year after states have received allocations and authorization to proceed with new enrollments and have determined the parcels are eligible and have followed applicable program policy for ranking and funding selections. Note that, prior to obligation, any eligible entity that will receive payment must be established as a vendor in Financial Management Modernization Initiative (FMMI).
2. Prior to the execution of a parcel contract to obligate funds, the state conservationist must ensure all necessary reviews and authorizations are in place, including:
 - a. EPD approval of the program agreement and exhibits, if required.
 - b. Approval of any applicable waivers (e.g., adjusted gross income (AGI) waiver).
 - c. The appropriate pre-obligation internal controls reviews completed pursuant to the most current easement internal controls policy in NI 300-300, "Instruction and Guidance for State Implementation of Easement Internal Controls Prior to Obligation, Payment, and Closing."
3. After all required reviews are conducted and the state conservationist receives required approvals, the parcel contract package will be sent to the eligible entity and any coholders for signature. This package will include the appropriate program agreement (if not already executed) and the program-specific parcel contract, to include the entire suite of parcel contract documents. After the eligible entity signs the required documents, the state conservationist may execute the program agreement and the associated parcel contract.

4. The state conservationist has the delegation of authority to execute parcel contracts on behalf of NRCS. The state conservationist may delegate, in writing, to the assistant state conservationist responsible for easement programs the authority to execute the parcel contract, including any subsequent modifications and payments. This authority may not be further delegated.
5. Funds obligated to an individual parcel contract may only be used for the purchase of an entity-held easement on the parcel identified in the contract and may not be transferred to other contracts. However, a parcel contract may be modified to authorize the enrollment of an individual substitute parcel as set forth below in section 527.85.
6. Following execution of the required documents by the required parties, the appropriate program funds must be obligated in FMMI directly from the appropriate business tool or using the appropriate bulk upload process.

527.85 Parcel Contract Modifications

Certain parcel-specific attributes identified in the parcel contract may be modified, provided such changes are within the scope of the original parcel contract, meet all program requirements as set forth in the applicable regulations and policy, and meet the requirements set forth in the program agreement and the parcel contract. All modifications must be mutually agreed to by NRCS and the eligible entity and must be documented using the appropriate program-specific “Modification of the Schedule of Acquisition” form, which must be executed prior to the expiration of the parcel contract and prior to easement closing. Parcel contract modifications may include, but are not limited to:

1. Contract expiration date modification (standard transactions only)—Prior to expiration of a parcel contract, a modification may be executed to extend the expiration date for a period of 12 months from the previous expiration date. A maximum of two 12-month extensions may be approved. No parcel contract may be extended beyond March 31 of the fifth fiscal year following the original fiscal year of the parcel contract execution.
2. Transaction type modification (ACEP-ALE and RCPP-ACEP-ALE only)—Subject to the requirements set forth in 440 CPM § 528, NI 300-308, and herein, an ACEP-ALE parcel contract for a buy-protect-sell transaction may be modified to change the transaction type from a pre-closing to a post-closing buy-protect-sell transaction, from a post-closing to a pre-closing buy-protect-sell transaction, or from a buy-protect-sell transaction to a standard transaction with the qualified farmer or rancher. A parcel contract may not be modified to change a standard transaction to a buy-protect-sell transaction.
3. Designation of eligible entity status—A parcel contract may be modified to change the provisions under which the eligible entity is acquiring the easement as either a certified or noncertified eligible entity. For example, if an eligible entity becomes certified after the parcel contract is originally

executed, the eligible entity may request to modify the parcel contract so that the acquisition proceeds as a certified entity transaction. Such modification may only be approved if the provisions of the program agreement and parcel contract that apply to eligible entity status (certified or noncertified), including the document submission and review requirements, can be met within the period of performance of the parcel contract.

4. Updates to the existing parcel information—Changes to the boundary of the proposed easement area or the total easement acres (for example, based on receipt of a final legal survey) must be documented through a modification to the parcel contract as follows:
 - a. For a change to the proposed easement boundary, the revised easement area must first be determined eligible for enrollment based on the applicable program requirements. Once determined eligible, the easement value must be adjusted or updated as set forth in 440 CPM 527, Subpart E. If NRCS decides to proceed using the revised easement area, the parcel contract must be modified to reflect the revised easement acreage and any update in easement cost information, and the modified parcel contract must include an updated map showing the revised land units or legal description.
 - b. If the only change is to the calculated number of acres within the existing footprint of the identified parcel and there is no change to the easement boundary, modifying the parcel contract is not required. However, any time a parcel contract modification is executed to reflect other changes or updates, it must reflect the most current easement acreage information.
5. Cancellation or substitution of an existing parcel—Due to changing circumstances, including but not limited to landowner withdrawal, unapproved appraised values, inability to provide clear title or sufficient access, hazardous materials issues, or expiration of offers, eligible entities may request cancellation of the parcel contract or may identify a substitute parcel for consideration. NRCS may allow for the substitution of a parcel after execution of the parcel contract if the substitute parcel meets all of the following requirements:
 - a. All landowners of the proposed substitute parcel are determined eligible in accordance with applicable program policy for the fiscal year that the modification to substitute the parcel is executed.
 - b. The substitute parcel provides an equivalent or greater conservation value than the original parcel.
 - c. The substitute parcel meets land eligibility criteria of the applicable program.
 - d. The substitute parcel is the same enrollment type (e.g., ACEP-ALE-GSS) as the original parcel.
 - e. Sufficient funds are available under the original parcel contract for the acquisition of an entity-held easement subject to the applicable cost-share requirements.

- f. The substitute parcel ranks highly enough to be selected for funding under the specific program in the fiscal year of the substitution and is the highest ranked parcel available for substitution for the eligible entity. If there are not sufficient funds available to fund the highest ranked parcel, the highest ranked parcel that can be funded may be selected.
 - g. The substitute parcel is not funded under any other parcel contract or agreement for an easement under the same or any other NRCS program.
 - h. Prior to execution of the modification of a parcel contract to substitute a parcel, all required national level internal controls reviews required in NI 300-300 has been completed.
6. Conservation Easement Deed Language—The parcel contract may be modified to—
 - a. For ACEP-ALE and RCPP-ACEP-ALE only, change the option an eligible entity will use to address the NRCS program-specific deed requirements in the conservation easement deed (e.g., attach, incorporate, or use approved template), provided the changes would not have a negative effect on the original ranking and selection of the parcel.
 - b. Change the version of the minimum deed terms that will be used for the subject parcel, provided that the selected version of the minimum deed terms is allowed in accordance with program policy and the changes would not have a negative effect on the original ranking and selection of the parcel.
 - (1) For RCPP, if the level of restrictiveness or selection regarding the US right of enforcement is modified, the eligible entity must provide an updated fair market value of the easement either in the form of an updated appraisal or supported estimate of the fair market value of the easement.
 - (2) If the updated fair market value of the easement results in change to the federal share, then the easement cost information must be modified in accordance with subsection 8 below.
 - c. Attach the EPD-approved draft easement deed if the minimum deed terms are incorporated into the body of the easement deed.
 - d. Attach an EPD-approved template deed.
7. Easement Plan—
 - a. The eligible entity may request a modification to update the elections made with respect to the optional components of an RCPP or ACEP-ALE easement plan, provided the changes would not have a negative effect on the original ranking and selection of the parcel.
 - b. For 2018 Farm Bill RCPP only, if the level of restrictiveness of the minimum deed terms is modified from minimally restrictive to moderately restrictive or highly restrictive, the modification may also require changes to the selections regarding the RCPP easement plan.
8. Easement Cost Information—The parcel contract must be modified to reflect changes to the easement cost information if any of the following occurs:

- a. If the final approved fair market value of the easement is lower than the originally estimated amount or other changes result in non-federal share contributions below required levels, the parcel contract must be modified to decrease the federal share for the parcel to ensure that no more than the maximum allowable cost-share amount is provided for the individual parcel.
 - b. If the final approved fair market value of the easement and non-federal share provided by the eligible entity supports a federal share amount that is higher than the original estimate, the state conservationist has discretion to increase the amount of the federal share for the individual parcel up to the maximum allowable cost-share amount. Pursuant to the terms of the program agreement, NRCS is under no obligation to increase the federal share above the original estimated amount. The state conservationist may only authorize an increase in the federal share amount for an individual parcel where the change is within the scope of the original parcel contract and there are sufficient authorized funds available.
 - c. A parcel contract modification is not required to update easement cost information if there is no change to the amount of the federal share that is being requested or that may be provided. However, the details of the final easement costs, including the approved appraised value, the final federal share amount, and the breakdown of the non-federal share, must be documented on the appropriate form for confirming matching funds for closing.
9. Eligible Entity Information—To add or remove an eligible entity as a party to the individual parcel contract or to change the payment shares or distribution of the federal share for the identified eligible entities, the appropriate program-specific “Modification of the schedule of acquisition” form must identify and be executed by all of the eligible entities that will be party to the parcel contract moving forward. Additionally, to add an eligible entity to the parcel contract, such eligible entity must be party to the associated program agreement and must be added to and must sign the existing “Parcel contract” form and “Parcel cost-share contract appendix” form for the specific parcel.
 10. Other holder information—If there are changes to the list of coholders or third-party right holders identified in the parcel contract, the parcel contract must be modified to update the list of all such parties on the applicable “Modification of the schedule of acquisition” form, and any newly identified coholders must sign such form and the existing “Parcel cost-share contract appendix” form. Prior to modifying the parcel contract to add a coholder, such coholder must be party to the associated program agreement. All coholders and third-party right holders identified in the parcel contract must be properly identified in the final version of the conservation easement deed.
 11. Parcel landowner information—In accordance with the terms of the parcel contract, the eligible entity must inform NRCS of any changes in the land ownership of the parcel as soon as possible. Before modifying the parcel contract to reflect new or newly identified landowners, all such landowners

must submit a new parcel application for the appropriate program and must have current records with the Farm Service Agency.

- a. In addition, the eligible entity must provide NRCS a written pending offer that is valid for any new or newly identified landowners. Upon completion of all of the above stated requirements, the parcel contract must be modified to reflect the updated ownership on the applicable “Modification of the schedule of acquisition” form. After the modification is signed by the eligible entity and NRCS, the landowner identification and ownership shares must be updated in the applicable business tools to reflect the actual ownership and ownership shares based on the most current evidence of land ownership.
- b. A modification to the parcel contract is not required if the only change is to the members of a landowner-legal entity unless such change affects the eligibility of the landowner-legal entity itself. If all the required landowners are unwilling or unable to execute the parcel contract or establish eligibility in the appropriate fiscal year, the eligible entity will be notified that the parcel contract must be terminated.
- c. In addition to the requirements set forth above, the following sets forth specific requirements for different types of landowner changes that may occur:
 - (1) Transfer or sale of parcel prior to closing the entity-held easement.—Except as part of an approved buy-protect-sell transaction, any parcel on an active, unexpired parcel contract that is sold or transferred by any of the landowners of record prior to the easement being perfected will result in parcel contract termination. This includes instances of the current landowner entering into a contract to sell the land or transfer of parcel due to the death of the original landowner. To avoid parcel contract termination, the parcel contract must be modified to add the new landowner. Any new landowner must meet the landowner eligibility requirements of the applicable program for the fiscal year in which the state conservationist signs the modification.
 - (2) Corrections to landowners identified on a parcel contract.—If any landowners that held a fee or title interest in the subject parcel at the time the parcel contract was obligated were not correctly or accurately identified and as a result did not have appropriate landowner eligibility determinations completed, eligibility determinations must be made for these landowners. To be eligible, each newly identified landowner must meet the requirements of the applicable program for the fiscal year in which the original parcel contract was obligated. A modification to the parcel contract must be performed to add the newly identified landowners to the parcel contract. This requirement only applies to landowners that held and have continued to hold the same fee or title interest in the subject parcel at all times since the parcel contract was executed.
 - (3) Changes in the members of a landowner-legal entity under an active parcel contract.—For a parcel owned by a landowner that is a legal

entity, a change in the members of the legal entity prior to closing must be reviewed by the state to ensure that the landowner and any new members meet the eligibility requirements of the program and whether any commensurate reductions for AGI must be applied to the federal share provided by NRCS. If the landowner is determined to be eligible, it is not necessary to modify the parcel contract as a result of the change in members of the landowner-legal entity.

- (4) If the specific circumstances of a landowner change after enrollment are outside of the scenarios listed in this section, states must contact EPD for guidance on whether the change can be made and how it must be documented.

12. Out-of-scope modifications—Out-of-scope modifications to the parcel contract are not permitted. Whether a contract modification is within the scope of the original agreement is determined by NRCS. If there is a requested change to a parcel after execution of the parcel contract that is outside the scope of the original program agreement and parcel contract, the state may need to terminate the parcel contract.

527.86 Closing and Payments

A. General.—

1. Payments made to the eligible entity for the purchase of entity-held easements are disbursed on an individual contract basis according to the terms and conditions of the program agreement, parcel contract, and applicable program policy. Payments are only disbursed once NRCS determines that the parcel meets all the requirements to proceed with closing and payment. Prior to any payment, the eligible entity must prepare and submit all required payment request and other required documentation to NRCS, and NRCS must complete the internal controls review process as required by NI 300-300.
2. The applicable easement payment application form (NRCS-CPA-1268 for ACEP-ALE and RCPP-ACEP-ALE, or NRCS-CPA-1280 for 2018 Farm Bill RCPP) must be used to document and process all payments of the cost-share assistance funds which constitute the federal share provided by NRCS. The payment form identifies the required supporting documentation that must be submitted by the eligible entity as part of the payment request package.
3. If an advance of the federal share will be requested for entity-held easements being acquired under a program agreement with a noncertified eligible entity, in addition to submitting the required payment request package documents, eligible entities must also obtain NRCS approval of the draft conservation easement deed and exhibits thereto (including the legal description or survey, appraisal, title commitment, baseline documentation report, and, as applicable, the easement plan) prior to requesting advance of the federal share or closing on an entity-held easement for which the federal share will be requested. NRCS documents its approval of the required documents by completing and signing the “NRCS approval letter to proceed with the entity held easement

acquisition” and provides a copy to the eligible entity (see subpart Y of this part for the “NRCS approval letter to proceed with the entity held easement acquisition”).

4. Payment of the federal share for the purchase of the entity-held easement is made to the eligible entities through an electronic funds transfer in accordance with the payment share percentages on the payment application form. Eligible entities receiving payment must be established as vendors in FMFI.
 5. The eligible entity or the closing agent prepares all IRS form 1099-MISC, “Miscellaneous income,” reporting for landowners. The closing agent must prepare the form 1099-MISC for advances.
 6. Closing must occur prior to the expiration of the parcel cost share contract. Closing may occur after the expiration of the program agreement.
- B. Payment types.—Payment of the federal share of an entity-held easement may be issued to the eligible entity on a reimbursable basis after the easement is acquired or as an advance payment issued prior to closing.
1. Advance payments.—An advance payment is made when the eligible entity requests NRCS to provide the federal share prior to the time of closing.
 - a. When an advance is requested, the eligible entity must notify NRCS and provide the required payment request package documents at least 60 days prior to the planned closing date. NRCS will not issue the payment more than 30 days prior to the planned closing date.
 - b. Eligible entities acquiring easements under a program agreement in which they are designated as a non-certified entity must have received the signed “NRCS approval to proceed with the entity held easement acquisition” letter prior to submitting the required payment request package documents for the advance of the federal share or prior to closing when the federal share is paid as a reimbursement.
 - c. Advance payments require liquidation in the appropriate business tool following the established business process.
 - d. Funds must not be advanced more than 30 calendar days before the scheduled closing. The closing agent may not hold the funds in escrow for more than 30 calendar days. If the entity-held easement cannot be closed within 30 calendar days, the closing agent must return the funds (and any accrued interest) to NRCS in accordance with Title 250 General Manual, Part 414 “Undelivered Orders,” Subpart B “Advance Payments,” section 414.29(1). States, including EAB, must reach out to the appropriate FPAC Business Center section to determine the appropriate course of action.
 2. Reimbursements.—A reimbursement payment is made when the eligible entity requests to be reimbursed for the amount of the purchase price comprising the federal share that the eligible entity paid to the landowner at closing.
 - a. The eligible entity may elect to receive payment after the easement has closed. Funds may be issued directly to the eligible entity or may be

assigned on the applicable easement payment application form, as described below.

- b. NRCS must certify receipt of all post-closing documentation prior to issuing a reimbursement payment for an entity-held easement.
- C. Preclosing and prepayment reviews and requirements for entity-held easements acquired by noncertified eligible entities under a program agreement.—
1. The following procedures supplement any requirements in the program agreement, parcel contract, or program-specific policy and guidance. To the extent that program-specific policy or guidance requires additional documentation, earlier submission or completion of documents, or additional reviews by NRCS beyond the minimum requirements set forth in this section, such program-specific policy or guidance must be followed.
 2. Prior to the appraisal being completed or submitted for technical review or any national appraiser reviews required pursuant to subpart E of this part—
 - a. The eligible entity must submit the draft conservation easement deed to NRCS, including all exhibits, a legal description or survey, and a map of the building envelope(s).
 - b. The draft conservation easement deed must be reviewed and approved by NRCS in accordance with program-specific policy and guidance and the appraiser must be provided a copy of the NRCS-approved draft conservation easement deed.
 3. Within 12 months prior to closing, NRCS must complete the parcel inspection that is required to complete the form NRCS-LTP-27, “Preliminary certificate of inspection and possession.”
 4. No less than 90 days prior to the targeted closing date of an entity-held easement, the eligible entity must submit the following to NRCS:
 - a. A draft baseline documentation report for the subject parcel.
 - b. A copy of the easement plan or highly erodible land (HEL) plan, if applicable.
 - c. Any waiver requests related to the parcel, including supporting documentation.
 - d. A copy of the American Land Title Association (ALTA) title commitment for the subject parcel and underlying documents.
 5. Upon receipt of the materials from the eligible entity required in paragraph 4 above, NRCS must complete the following:
 - a. Review the title commitment and complete the form NRCS-LTP-23, “Certificate of use and consent,” in accordance with subpart H of this part and provide the eligible entity with written notification of recorded and unrecorded title issues that must be remedied prior to closing.
 - b. Review the legal description or survey of the parcel, including legal access, to ensure it meets the requirements of program-specific policy and subpart G of this part, including, but not limited to, conformance to the

- description set forth in the title records and proper representation of the easement area.
- c. Conduct a technical review of the appraisal and any national appraiser reviews required pursuant to subpart F of this part to ensure that the federal share being provided by the United States is supported by the appraised fair market value of the entity-held easement. NRCS will notify the eligible entity of the acceptability of the appraisal or of the changes needed to meet applicable appraisal standards and NRCS requirements.
 - d. Review the draft baseline documentation report and, as applicable, the agricultural land easement plan, which may include an HEL conservation plan.
 - e. Send a letter to the eligible entity providing any closing instructions, including title requirements. For advance payments only, attach the NRCS closing agent requirements to the letter (see subpart Y of this part for the “NRCS closing agent requirements”).
6. For advance payments only, no less than 60 days prior to the targeted closing date of an entity-held easement, the eligible entity must submit the following to NRCS:
- a. Statement to confirm matching funds.
 - (1) For general ALE and RCPP-ACEP-ALE parcels, use form NRCS-CPA-230E.
 - (2) For ACEP-ALE-GSS and RCPP-ACEP-ALE-GSS parcels, use form NRCS-CPA-230F.
 - (3) For ACEP-ALE and RCPP-ACEP-ALE buy-protect-sell transactions, use form NRCS-CPA-230G.
 - (4) For 2018 Farm Bill RCPP parcels, use form NRCS-CPA-1279.
 - b. Either (1) an ALTA closing protection letter addressed to the eligible entity named as the insured party on the ALTA title commitment or (2) evidence of liability insurance for the closing agent equal to at least the amount of the federal funds being provided to the eligible entity for the purchase of the entity-held easement.
 - c. A complete payment request package, including the payment application form.
 - d. Signed NRCS closing agent requirements letter.
 - e. Documentation of the resolution of any identified issues with title, appraisals, deeds, or easement plans.
 - f. The baseline documentation report signed by the eligible entity.
 - g. As applicable, the easement plan (including HEL plan where applicable) signed by the landowner and eligible entity.
7. For reimbursements only, no less than 30 days prior to the targeted closing date of an entity-held easement, the eligible entity must submit the following to NRCS:
- a. Statement to confirm matching funds.
 - (1) For general ALE and RCPP-ACEP-ALE parcels, use form NRCS-CPA-230E.

- (2) For ACEP-ALE-GSS and RCPP-ACEP-ALE-GSS parcels, use NRCS-CPA-230F.
 - (3) For ACEP-ALE and RCPP-ACEP-ALE buy-protect-sell transactions, use form NRCS-CPA-230G.
 - (4) For 2018 Farm Bill RCPP parcels, use form NRCS-CPA-1279.
 - b. The baseline documentation report signed by the eligible entity.
 - c. As applicable, the easement plan (including HEL plan where applicable) signed by the landowner and eligible entity.
8. Prior to closing, upon receipt of all required documentation from the eligible entity, NRCS must do the following:
- a. Review and sign the “Statement to confirm matching funds” and provide a copy to the eligible entity.
 - b. Complete all required national level internal controls reviews as required in NI 300-300.
 - c. After completion of all required reviews, complete and sign the NRCS “Approval letter to proceed with the entity held easement acquisition” and provide a copy to the eligible entity.

D. Closing and Payment Procedures

1. Payment request package.—The documentation required from the eligible entity to request an advance or reimbursement of the federal share for the purchase of the entity-held easement is detailed on the payment application form and in subsection C above. Eligible entities may only request payment once all preclosing and prepayment steps have been completed for the applicable payment type.
2. Certification of the easement practice.—
 - a. Upon receipt of all payment request documentation, NRCS verifies that the documentation meets the identified program and conservation activity requirements.
 - b. For reimbursement payments, NRCS must receive the following documents from the eligible entity after the closing of the easement and verify that each document is consistent with the approvals provided by NRCS prior to closing.
 - (1) Executed and recorded conservation easement deed.
 - (2) Final policy of title insurance.
 - (3) Final closing settlement statement.
 - c. On the payment application form, NRCS will populate the contract information, conservation activity, and payment summary and distribution details. The eligible entity must verify the information populated by NRCS, submit the required documents, and return the signed payment application form to NRCS.
 - (1) The “Payment summary” section must include information for all eligible entities that will receive payment of the federal share as indicated on the parcel contract or any subsequent modifications. Eligible entities with a 0 percent payment share do not need to be

included in the “Payment summary”; however, all eligible entities must sign the payment application form.

- (2) In the “Payment distribution and assignments” section, NRCS will document the total amount owed to each eligible entity and the eligible entity will identify how the funds owed will be distributed. The eligible entity must specify the recipients, the amounts to be paid to each recipient, and the required account information.
 - (3) The eligible entity must provide executed assignment of payment documentation for any portion of the payment being assigned to the closing agent (as identified in the “NRCS closing agent requirements”) or to another assignee (as identified in form CCC-36, “Assignment of payment”).
- d. The closing agent is a vendor providing a service to the eligible entity, not a recipient or subrecipient of the federal funds. The closing agent for the eligible entity is therefore not required to have current System for Award Management (SAM) registration, or successor system.
 - e. NRCS will certify that all the required documents have been submitted to meet the program and conservation activity requirements identified in the “Conservation activity certification” section of the payment application form.
 - f. Once all eligible entity signatures have been obtained on the payment application form, NRCS certifies the long-term protection of land practice in the applicable business tools.
3. NRCS approval of the payment.—
 - a. After the above steps have been completed, the state conservationist will sign the easement payment application as the approving official.
 - b. Payment will be completed via the applicable business tools and workflows.
 4. Post-closing requirements.—
 - a. NRCS must ensure that upon closing of the easement, any post-closing requirements outlined in the applicable program policy are completed.
 - b. Liquidation of the advance payment—If a payment has been advanced, NRCS must also ensure that the payment is liquidated. A copy of the executed, unrecorded conservation easement deed is the minimum requirement for processing a liquidation.

527.87 Delegation of NRCS

- A. The state conservationist has the delegation of authority to execute the program agreement and all associated parcel contracts, including any modifications to the program agreement or associated parcel contracts, on behalf of NRCS. The authority to execute and enter into the program agreement itself may not be delegated below the state conservationist.

- B. If required by this subpart, prior to execution of a program agreement or modification of a program agreement, the state conservationist must receive written approval from the deputy chief for programs, EPD director, or EPD easement policy branch chief, as applicable. If such approval is required, states must submit the draft, unexecuted program agreement or modification to EPD for processing at NRCS.ProgramAgreements@usda.gov in accordance with published guidance.
- C. The state conservationist may delegate, in writing, to the assistant state conservationist responsible for easement programs the authority to execute the parcel contract, schedule of acquisition, modification to the schedule of acquisition, and payment application forms. These authorities may not be delegated below the assistant state conservationist.

527.88 Business Tools

- A. All program agreements must be entered, executed, and uploaded in the appropriate system of record for the applicable program.
- B. The program agreement and associated parcel contracts will be developed using business tools available for all agreements that utilize program authorities to commit NRCS funds. Not all program agreements and parcel contracts may have the capability to utilize all available business tools at the time they are developed. States should follow any supplemental guidance for specific program implementation and utilization of business tools.