

Part 528 – Agricultural Conservation Easement Program

Subpart C – ACEP Appeals

528.20 Appeals

A. Appeal Process

This section identifies the different programmatic relationships that NRCS has with persons, legal entities, or eligible entities that receive payment under ACEP in return for participation in the program and the nature of the appeal rights that flow from these relationships:

- (i) All ACEP appeals will be handled in accordance with 7 CFR Parts 11 and 614 and Title 440, Conservation Programs Manual (CPM), Part 510, Subparts A and B, as it relates to program appeals, specifically title XII program appeals.
- (ii) Under ACEP-ALE, NRCS enters into agreements with and makes payments directly to the eligible entity for the purchase of an agricultural land easement. Thus, the eligible entity is the program participant and has appeal rights under the application process. Under ACEP-ALE, the landowner does not have any appeal rights because the landowner, under ACEP-ALE only, does not qualify as a program participant under the appeal regulations. The only exception to this is that a landowner may have appeal rights if NRCS determines that a landowner has violated the HEL/WC payment eligibility requirements under 7 CFR Part 12.
- (iii) Under ACEP-WRE, NRCS enters into agreements with and makes payment directly to landowners of eligible land. Thus, landowners are the program participants for purposes of application, enrollment eligibility, and payment. Once NRCS has acquired the easement and made payment, the landowner does not have any remaining benefit or entitlement from program participation and thus ceases to be a participant for administrative appeal purposes. All landowners' party to the original easement transaction and all subsequent landowners who purchase the property encumbered by the easement do not have appeal rights under 7 CFR Part 11 or 614; such landowners may be provided limited in-State appeals for certain posteasement closing determinations as described in section E below.

B. Actions Not Appealable

- (1) Actions and decisions that are generally applicable to all participants in the Nation or State are not appealable in ACEP. Items that are not appealable, include but are not limited to the following:
 - (i) Easement or restoration cost-share rates
 - (ii) For ACEP-WRE, areawide market analysis (AWMA) and geographic area rate cap (GARC) values
 - (iii) Geographic priority area designations
 - (iv) Funding allocations and decisions
 - (v) NRCS conservation practice standards and specifications
 - (vi) Application of ranking criteria
 - (vii) Fund availability
 - (viii) Science-based formulas and criteria
 - (ix) Other matters of general applicability
- (2) Actions specific to a participant that are not appealable include—
 - (i) NRCS determination that land is ineligible due to unacceptable title encumbrances or insufficient access.

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- (ii) For ACEP-ALE—
 - The ALE federal contribution amount offered by NRCS.
 - NRCS not authorizing closing or not issuing payment due to expiration of an ALE cooperative agreement or ALE grant agreement.
 - (iii) For ACEP-WRE—
 - Cancellation of a conservation program contract, since cancellations are mutually agreed upon by the contract holder and NRCS.
 - NRCS not executing the warranty easement deed or 30-year contract and not issuing payment due to expiration of an APCE or AECLU.
 - NRCS deciding not to extend an APCE for another period of time.
- (3) Once an ACEP easement is in place, the United States obtains vested rights and interests, based on the enrollment type, that authorize NRCS to make determinations necessary to preserve, restore, enforce, and administer these rights and interests on behalf of the United States. How NRCS exercises these discretionary authorities to ensure the long-term administration and enforcement of these Federal rights and interests do not vest any program rights or privileges in the landowner, eligible entity, or third party, and thus are not program benefits. Therefore, NRCS decisions to exercise such discretionary authorities are outside the purview of the USDA appeals process under 7 CFR Parts 11 and 614 and are the jurisdiction of the Federal courts. The United States may bring actions in Federal court to enforce or defend its rights or interests in ACEP easements. NRCS discretionary authorities related to rights and interests owned by the United States include but are not limited to—
- (i) NRCS decisions regarding easement administration action requests.
 - (ii) NRCS easement enforcement actions.
 - (iii) For ACEP-WRE, NRCS decisions regarding the issuance, modification, or revocation of compatible use authorizations.

C. General Conditions of Appealability

Actions and decisions that are not generally applicable to all participants in the Nation or State and are specifically adverse to the eligible entity under ACEP-ALE or to the landowner under ACEP-WRE are appealable in ACEP. Appealable items include, but are not limited to—

- (i) A determination that an application is not eligible for funding, except as described paragraph B(2)(i) above.
- (ii) A determination by NRCS that a landowner has violated highly erodible land or wetland conservation provisions under 7 CFR Part 12.

D. Appeals in Writing

All appeals must be requested in writing and submitted by the appellant to the State Conservationist in the relevant State by the applicable deadlines.

E. Posteasement Closing Determinations

- (1) Except for violations of 7 CFR Part 12 identified above, NRCS determinations that are after easement closing are not subject to the appeal process in 7 CFR Parts 11 and 614.
- (2) A WRE landowner or ALE easement holder with easement lands that are not in compliance with the easement terms will be provided notice of the NRCS determination of noncompliance, and the landowner or ALE easement holder may be provided the opportunity to file a limited in-State appeal with the appropriate State Conservationist. There is no further appeal available.
- (3) The information provided by the WRE landowner or ALE easement holder pursuant to this limited in-State appeal are to provide the State Conservationist with the information necessary to ensure that the NRCS determination is in accordance with the rights acquired by

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the United States under the applicable easement deed and assist with creating the necessary administrative record should court action become necessary. Therefore, all information generated by the limited in-State appeal, including the State Conservationist decision, must be incorporated into the official easement case file maintained at the State office.