

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart E – ACEP-ALE Application, Ranking, and Selection

528.40 ACEP-ALE Application, Ranking, and Selection Overview

A. Application, Ranking, and Selection Steps Outline.—The following outlines the procedural steps for ACEP-ALE application, ranking, and selection; unless otherwise stated, steps may be taken concurrently:

- (1) Step 1.—Each fiscal year, the State conservationist, with advice from the State technical committee, shall review and update as necessary the State’s ACEP-ALE ranking criteria, identify one or more ranking pools and the associated set of ranking factors to be used for each identified ranking pool, and establish associated ranking threshold scores. To the extent possible, this step should occur prior to the beginning of each fiscal year and must occur prior to ranking applications. After completing this step, a copy of this information must be provided to the Easement Programs Division (EPD).
- (2) Step 2.—At least 30 days prior to an announced application cutoff date, States shall post the current fiscal year’s ACEP-ALE ranking criteria to the State NRCS web page.
- (3) Step 3.—NRCS accepts ACEP-ALE applications on a continuous basis. States may establish and advertise one or more application cutoff dates during the fiscal year in coordination with any required national application cutoff dates. An announcement must be made at least 30 days prior to the application cutoff date.
- (4) Step 4.—Eligible entities must submit an entity application for an ALE-agreement, including all required supporting documentation for the entity and the ALE-agreement.
- (5) Step 5.—Eligible entities must also submit a parcel application for each individual parcel, including all required supporting documentation for the parcel.
- (6) Step 6.—NRCS State offices will review application information and supporting documentation provided by the entity and determine entity eligibility, land eligibility, and landowner eligibility. Applications received after the cutoff date may be considered in the next application period.
- (7) Step 7.—NRCS staff will conduct onsite visits and rank eligible parcel applications using the current, applicable ACEP-ALE ranking criteria and enter the ranking information into the required worksheets and systems. During these onsite visits, States should also complete the “Landowner Disclosure Worksheet,” the “Hazardous Materials Field Inspection” checklist, and the “Hazardous Materials Landowner Interview.”
 - (i) Processing and ranking of eligible applications should occur on a continuous basis, but at a minimum, complete applications received prior to the cutoff date will be reviewed for eligibility and applications determined to be complete and eligible must be ranked.
 - (ii) In addition, each fiscal year the State conservationist, in consultation with the State technical committee, may establish a high threshold ranking score such that eligible applications that rank above the threshold may be tentatively selected for funding at any time during the fiscal year.

- (iii) At this time, States will upload the application, eligibility, and ranking information for all eligible parcels into the appropriate business tools (e.g., the National Easement Staging Tool (NEST)).
- (8) Step 8.—The State conservationists will select eligible parcels for funding based on ranking priority using ACEP-ALE funds allocated for new enrollment for that fiscal year and may notify the eligible entity of parcels tentatively selected for funding.
- (9) Step 9.—In coordination with reviews required based on the ALE-agreement types as outlined below in step 10, and prior to obligating funds, States must complete the preobligation review pursuant to the most current easement internal controls policy and guidance (see subpart F of this part, for additional information on ALE-agreement types).
- (10) Step 10.—All ALE-agreements, including associated exhibits and attachments, must be prepared, submitted, reviewed, and approved prior to NRCS execution of the agreement or associated exhibits or attachments, pursuant to fiscal year specific procedural guidance applicable to the ALE-agreement type as follows:
- (i) For ALE-agreements that are cooperative or grant agreements:
- Step 11.—All draft ACEP-ALE cooperative agreements with eligible entities or ACEP-ALE grant agreements with certified eligible entities must be submitted to the FPAC-BC Grants and Agreements Division (GAD) for review and to obtain a “Notice of Grant and Agreement Award” (“Notice of Award”). For ALE-agreements with a Federal share exceeding \$250,000 or other amount identified in FPAC-BC guidance, the State conservationist must receive a delegation of authority (DOA). Applicable policy and procedures in National Instruction (NI) 120-301, “Processing Grants, Agreements, and Memorandums of Understanding”, the current FPAC-BC GAD customer guide, and fiscal year-specific guidance must also be followed.
 - Step 12.—After receiving the Notice of Award from the FPAC-BC GAD, along with any needed DOAs, and after completing internal control reviews, the State conservationist provides a copy of the unsigned template ALE-agreement (for new agreements) or an amendment (for existing agreements), with all exhibits and attachments, including the listing of parcels selected for funding and any approved, unfunded substitute parcels.
 - Step 13.—After the eligible entity returns a properly signed ALE-agreement or amendment, the State conservationist certifies the internal controls review and executes the ALE-agreement or amendment on behalf of NRCS. Once the ALE-agreement or amendment is fully and properly executed by all parties the funds must be obligated in the financial system (e.g., Financial Management Modernization Initiative (FMMI)). Within 10 business days of such obligation, the electronic records for the agreement and all associated parcels be updated in the appropriate easement business tool (e.g., NEST) and a copy of the fully executed ALE-agreement provided to the eligible entity.
- (ii) For ALE-agreements that are program agreements:
- Step 11.—Use of ACEP-ALE program agreements are limited to States that receive written authorization from the Deputy Chief for Programs.
 - Step 12.— Under ACEP-ALE program agreements, the obligation and payment of ACEP-ALE cost-share assistance for the eligible entity’s purchase of an agricultural land easement will be completed through individually executed ACEP-ALE cost-share contracts. Specific guidance on

the use and execution of ACEP-ALE program agreement and associated ACEP-ALE cost-share contracts will be provided to those States with approval to use ACEP-ALE program agreements.

- Step 13.— Preparation, submission, review, and execution of an ACEP-ALE program agreement, including associated attachments and exhibits must follow ACEP-ALE program agreement guidance provided to the State with the approval to use program agreements.

Note: An eligible parcel identified for funding pursuant to an ALE-agreement, amendment, or ACEP-ALE cost-share contract that is not successfully executed before the end of a given fiscal year may be identified for funding pursuant to an ALE-agreement, amendment, or ACEP-ALE cost-share contract executed in the subsequent fiscal year without being reranked or recompeting for funding if the State conservationist requests and receives such authorization from NRCS National Headquarters (NHQ), the eligibility requirements (entity, land, and landowner) are met for that subsequent fiscal year, and the State fund allocation is sufficient.

- (11) Step 14.—All applications not selected or considered during a given evaluation period, except for those cancelled or determined ineligible, may be deferred to subsequent evaluation periods. Such applications are subject to the eligibility and ranking criteria and processes in place for the fiscal year the application is considered for funding and must be determined eligible for the fiscal year in which a deferred application is selected for funding. (See subpart U of this part for a sample deferral letter.)

B. General Notice Provisions

When notifying entities, landowners, or the general public about the availability of ACEP-ALE, States should provide information that includes, but is not limited to—

- (i) ACEP-ALE purpose and goals.
- (ii) Application cutoff dates for funding consideration.
- (iii) Conditions under which cost-share assistance is available.
- (iv) Description of program benefits available.
- (v) How to submit an application and where to apply.
- (vi) Land, landowner, and entity eligibility requirements, including information that must be provided by the entity or landowner for the purposes of establishing eligibility.
- (vii) The current ranking criteria.
- (viii) Copy of or link to the most recently published ALE-agreement templates, including associated attachments or exhibits.
- (ix) Copies of the current ACEP-ALE application forms (NRCS-CPA-41, “Entity Application for an ALE Agreement” and NRCS-CPA-41A, “Parcel Sheet for Entity Application for an ALE Agreement,” or successor forms) or information on where to locate these forms.

528.41 ACEP-ALE Ranking Process

A. Purpose and Introduction

- (1) The ranking process enables the State conservationist to prioritize applications by determining projects that most merit enrollment. The ranking process is how NRCS

determines the conservation value of a parcel for the purposes of ACEP-ALE. This process does not guarantee or entitle the applicant to funding.

- (2) The State conservationist will use a set of ranking factors that address national and State criteria to score and rank each eligible application. Ranking factors that address the national criteria will comprise at least half of the total ranking score and must address the national criteria identified below in paragraph C(1) of this section. Ranking factors that address State criteria will comprise the other half of the total ranking score and may only address the State criteria identified below in paragraph C(2) of this section.

B. Ranking Process Overview

- (1) The State conservationist, with advice from the State technical committee, will establish and maintain a weighted ranking process to prioritize all eligible applications, using the national and State criteria and other considerations described in this subpart. This process may include a single set of ranking criteria and factors used to rank all applications, or different sets of ranking criteria and factors used to rank all applications within designated ranking pools that may be difficult to compare within a single set of ranking criteria and factors. The designation of separate ranking pools is limited to geographic areas, resource concerns, or other conditions that the State conservationist, with advice from the State technical committee, designates as critical for achieving program purposes and maximizing the benefits of the Federal investment, and the criteria needed to consider these benefits are not adequately captured under a single set of statewide ranking factors. Each fiscal year, the ranking criteria and factors, and any designated ranking pools, must be evaluated and updated as needed to ensure that the parcels that best meet the purpose, goals, and objectives of ACEP-ALE are given the highest priority.
- (2) Representatives from eligible entities participating in or applying to participate in ACEP-ALE must not be involved in establishing ranking pools or funding priorities or in developing or assigning weight to the ranking criteria or factors.
- (3) The ranking points for a set of ranking factors will be from zero to 400 points as described in NI 440-310, with zero being the lowest possible score and least deserving of enrollment and 400 being the highest possible score for these factors and most deserving of enrollment. At least 200 points must come from the national ranking criteria. The State conservationist may establish the ranking point values of the individual ranking factors that comprise the 200 available points based on the national criteria and the 200 available points based on the State criteria.
- (4) Once established for the fiscal year, the ACEP-ALE ranking criteria and factors will be made available to the public through the State's web page a minimum of 30 days before any application cutoff dates or other application deadlines. (See subpart U of this part for example ACEP-ALE parcel eligibility and ranking form.)
- (5) NRCS will conduct an onsite ranking of each eligible application. States should rank applications throughout the fiscal year, and at a minimum all eligible applications submitted prior to an individual application cutoff date will be ranked subject to the same set of ranking factors based on the applicable ranking pool.
- (6) Within a given application consideration period, the ranking process must be followed, and parcels selected for funding in order of ranking priority within ranking pools and, if applicable, in order of prioritization across ranking pools. If adequate funds are not available to fund the next highest ranked parcel, the State may select the next-highest-ranked parcel for which sufficient funding is available. Additionally, State conservationists may establish a ranking threshold score at a level high enough that an eligible parcel ranking above such threshold score would

automatically warrant selection for funding. For example, a State may identify that parcels that receive 95 percent of the available ranking points (e.g., for ALE a threshold score of 380 or higher) are always representative of high-quality parcels that will effectively meet program purposes in their State. States that identify a high ranking threshold score may at any time during the fiscal year select eligible parcels for funding that rank above that threshold score.

- (7) State conservationists should establish ranking thresholds below which parcels will not be funded. State conservationists must return funds to NHQ for reallocation to other States rather than fund low-ranking parcels that do not effectively meet ACEP-ALE purposes.
- (8) Prior to the end of each fiscal year, the State conservationist must upload into the appropriate business tool (e.g., NEST) the information for each application received or considered for funding during that fiscal year, including ranking score, eligibility status, and funding status.

C. Ranking Criteria

- (1) At least 50 percent of the weight of the ranking factors must be based on the national criteria comprising 200 points out of 400 points. The national criteria are as follows:
 - (i) Percent of prime, unique, and important farmland soils in the parcel to be protected.
 - (ii) Percent of cropland, rangeland, grassland, historic grassland, pastureland, or nonindustrial private forest land in the parcel to be protected.
 - (iii) Ratio of the total acres of land in the parcel to be protected to average farm size in the county according to the most recent USDA Census of Agriculture (<http://www.agcensus.usda.gov>).
 - (iv) Decrease in the percentage of acreage of farm and ranch land in the county in which the parcel is located between the last two USDA Censuses of Agriculture (<http://www.agcensus.usda.gov>).
 - (v) Percent population growth in the county as documented by the U.S. Census (<http://www.census.gov>).
 - (vi) Population density (population per square mile) as documented by the most recent U.S. Census (<http://www.census.gov>).
 - (vii) Existence of a farm or ranch succession plan or similar plan established to address agricultural viability for future generations.
 - (viii) Proximity of the parcel to other protected land, such as compatible military installations; land owned in fee title by the United States or an Indian Tribe, State or local government, or by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values; or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use or protects grazing uses and related conservation values.
 - (ix) Proximity of the parcel to other agricultural operations and agricultural infrastructure.
 - (x) Maximizing the protection of contiguous or proximal acres devoted to agricultural use.
 - (xi) Whether the land is currently enrolled in Conservation Reserve Program (CRP) in a contract that is set to expire within 1 year and is grassland that would benefit from protection under a long-term easement.
 - (xii) Whether the land is grassland of special environmental significance that would benefit from protection under a long-term easement.

- (xiii) Decrease in the percentage of acreage of permanent grassland, pasture, and rangeland, other than cropland and woodland pasture, in the county in which the parcel is located between the last two USDA Censuses of Agriculture.
 - (xiv) Percent of the fair market value of the agricultural land easement that is the eligible entity's own cash resources for payment of easement compensation to the landowner and comes from sources other than the landowner.
 - (xv) Other national criteria as provided by EPD.
- (2) The remaining weight (up to 200 points out of 400 points) of the ranking factors will be applied to NRCS State criteria approved by the State conservationist, with advice from the State technical committee. Such criteria may include only the following:
- (i) The location of a parcel in an area zoned for agricultural use.
 - (ii) The eligible entity's performance in managing and enforcing easements. The measure of performance is the efficiency of easement transactions completion or percentage of parcels monitored annually and the percentage of monitoring results reported annually. For noncertified eligible entities, this may also include the eligible entity's election to attach the ALE minimum deed terms addendum as written or the use of an existing EPD-approved entity-specific ALE deed template.
 - (iii) Multifunctional conservation values or benefits of farm or ranch land protection, including—
 - Social, economic, historic, and archaeological benefits.
 - Enhancing carbon sequestration.
 - Improving climate change resiliency.
 - At-risk species protection.
 - Reducing nutrient runoff and improving water quality.
 - Other related conservation benefits.
 - (iv) Geographic regions where the enrollment of particular lands may help achieve national, State, and regional agricultural or conservation goals and objectives or enhance existing government or private conservation projects.
 - (v) Diversity of natural resources to be protected or improved.
 - (vi) Score in the land evaluation and site assessment system or equivalent measure for grassland enrollments. This score serves as a measure of agricultural viability (access to markets and infrastructure). (See 7 CFR Part 658 for additional information.)
 - (vii) Measures that will be used to maintain or increase agricultural viability, such as succession plans, agricultural land easement plans (not including required highly erodible land (HEL) conservation plans), or entity deed terms that specifically address long-term agricultural viability.
 - (viii) Criteria specific to ranking pools that will facilitate the prioritization of parcels within designated ranking pools that will best achieve ACEP-ALE purposes and maximize the benefit of the Federal investment under the program for which the ranking pools were designated.
- (3) The State criteria may include a ranking factor that assigns points to eligible entities for meeting their existing agreement and monitoring responsibilities, and assigns no points under such criteria for parcels submitted by an entity that—
- (i) Is delinquent on conducting annual monitoring or whose annual monitoring reports are insufficient, late, or not provided to NRCS annually.
 - (ii) Has an existing ACEP-ALE agreement with funds remaining more than 2 years after the attachment or ACEP-ALE cost-share contract execution date without any expenditures or actions towards closings of easements in the third year.

- (iii) Has not submitted required documents in accordance with the timeframes required by the terms an existing ALE-agreement.
- (iv) Has not abided by the terms of an existing or closed Farmland Protection Program (FPP), Farm and Ranch Lands Protection Program (FRPP), or ACEP-ALE agreement.
- (v) Has not abided by the terms of or has failed to enforce an FPP, FRPP, or ACEP-ALE funded easement.

D. Resource Concerns

- (1) In addition to factors related to the threat of conversion, the NRCS State ranking factors should consider various environmental benefits and prioritize applications that will address multiple resources concerns, including but not limited to the following:
 - (i) Soil
 - Erosion reduction
 - Condition improvement
 - Deposition reduction
 - Protection of rare, unique, or endangered soils
 - (ii) Water
 - Quantity improvement, especially in critical groundwater recharge areas
 - Quality improvement, especially benefits to wetland functions and values
 - Air quality improvement
 - (iii) Plant
 - Suitability enhancement
 - Condition improvement
 - Productivity
 - Species composition, especially protection of intact native grasslands
 - (iv) Animal
 - Habitat improvement
 - Habitat diversity
 - Habitat protection, especially for threatened, endangered, or at-risk species
 - (v) Other resource concerns, such as protection of historical and archaeological sites and access to agricultural infrastructure, operations, markets, and labor.
- (2) These resource concerns should be addressed under State ranking criteria provided in paragraphs C(2)(iii)-(v) and (vii)-(viii) above.
- (3) For applications selected for funding based on their ability to address specific or multiple resource concerns the eligible entity must ensure that those resource concerns are identified in the baseline plan and as appropriate, addressed in the agricultural land easement deed or in an agricultural land easement plan.

E. Ranking Historical and Archaeological Sites.—The State ranking factors may use any of the following criteria to evaluate the relative quality of historical and archaeological sites:

- (1) Diversity of historical or archaeological resource types within each individual parcel (i.e., a parcel contains more than one type of historical or archaeological resource)
- (2) Scope, integrity, context, or intactness of historical and archaeological resource site
- (3) Association with existing community identity
- (4) Nationally significant designation (i.e., the parcel contains a national designation versus a State designation)
- (5) Other criteria established by the State conservationist, with advice from the State technical committee, State historic preservation officer (SHPO), and Tribal historic preservation officer (THPO).

F. Ranking Grasslands of Special Environmental Significance.—Ranking factors for grasslands of special environmental significance should be addressed under the national criteria provided in paragraph C(1)(xii) above and may also be addressed in the State criteria, and will emphasize all of the following:

- (1) The environmental benefits of enrolling the land
- (2) Cost effectiveness of enrolling the land so as to maximize the environmental benefits per dollar expended
- (3) Protection of grazing uses and related conservation values
- (4) Core grassland areas
- (5) Extent to which the grassland remains intact
- (6) The productivity of the land
- (7) Additional ranking factors that the State determines are appropriate for evaluating grasslands of special environmental significance.

G. Evaluating Applications Based on ACEP-ALE Investment

If the State conservationist determines that two or more eligible parcels are comparable in achieving ACEP-ALE purpose and goals (i.e., have the same ranking factor), the State conservationist may not assign a higher priority to any one of these solely on the basis of lesser cost to ACEP-ALE. Criteria other than the cost of the Federal ACEP-ALE contribution must be used to break the tie.

528.42 Applications for ACEP-ALE Cost-Share Assistance

A. Application Requirements

- (1) Although applications may be submitted on a continuous basis, entities that want to be considered for ACEP-ALE cost-share assistance within an identified application consideration period must submit a complete application on or before the announced application cutoff date. A complete ACEP-ALE application must contain the following:
 - (i) Entity application (Form NRCS-CPA-41 or successor form) and accompanying information identified in paragraph (2) below
 - (ii) Parcel sheet (Form NRCS-CPA-41A or successor form) for each individual parcel for which ACEP-ALE funds are being requested and the accompanying parcel information identified in paragraph (3) below
 - (iii) For applications associated with an ACEP-ALE cooperative or grant agreement, the additional information identified in paragraph (4) below
 - (iv) For applications associated with an ACEP-ALE program agreement, the additional information identified in paragraph (5) below
 - (v) Additionally, applications for a buy-protect-sell transaction, must also include information required in paragraph (6) below
- (2) The information provided in the entity application (NRCS-CPA-41, or successor form), and where appropriate in the documentation submitted in support of such application, must—
 - (i) Document the type of ALE-agreement the entity is requesting, as an:
 - ACEP-ALE Cooperative Agreement
 - ACEP-ALE Grant Agreement for Certified Entities
 - ACEP-ALE Program Agreement, only available in States as authorized by the Deputy Chief for Programs
 - (ii) Document for those entities applying as an eligible entity that would be party to an ALE-agreement, the following:

- The entity’s commitment to long-term conservation of agricultural lands through the use of voluntary conservation easements that protect farm or ranch lands from conversion to nonagricultural uses or conversion of grasslands to nongrassland uses.
 - The entity’s capability and record of acquiring, holding, managing, and enforcing conservation easements.
 - A citation to the State conservation easement enabling statute that the entity will rely on to acquire the agricultural land easements.
 - If the entity is a State or local government, or Tribal Government, then this must include a citation to the entity’s statutory authority to acquire conservation easements consistent with the purposes of ACEP-ALE.
 - The entity’s capacity to monitor and enforce the agricultural land easements.
- (iii) Provide evidence of entry in the Service Center Information Management System (SCIMS) or successor system (e.g., Business Partner).
- (iv) List the legal entities that may be identified in an agricultural land easement deed as a co-holder (grantee) or third-party right holder for each parcel application associated with the entity application, to the extent known at the time the entity application is submitted.
- (v) Provide evidence of current registration in Dun and Bradstreet Data Universal Numbering System (DUNS) and System for Award Management (SAM) for each identified eligible entity and co-holding entity (see subpart G, section 528.60A of this part, for additional information on co-holding entities).
- (3) The information provided in each parcel sheet (NRCS-CPA-41A, or successor form), and where appropriate in the documentation submitted in support of the individual parcel sheet, must describe the parcel to be protected using ACEP-ALE cost-share assistance and must—
- (i) Identify the parcel type as either a “general ALE” or as a “grasslands of special environmental significance.”
- (ii) Identify the transaction type that will be used to acquire the individual parcel as either a—
- Standard ALE transaction.
 - Preclosing transfer buy-protect-sell transaction.
 - Postclosing transfer buy-protect-sell transaction.
- (iii) Provide the land ownership information, including—
- Listing of all landowners of record as stated on the most current evidence of ownership documents.
 - Identifying a landowner that will serve as a primary contact.
 - Providing a copy of the most current evidence of ownership documents.
- (iv) Include a copy of the written pending offer for the parcel, except for parcel applications for a buy-protect-sell transaction.
- (v) Identify the parcel land eligibility category and land use information, including:
- If the presence of historical or archaeological sites is the basis for the parcel’s land eligibility, a brief description of the site’s significance and documentation of the site’s formal listing on the National Register of Historic Places, Tribal or State registers of historic places, or eligibility for listing in the national register must be included in the application. NRCS State office will review this documentation to determine the entity’s ability to manage and enforce the easement for historic or archaeological resource preservation purposes. The entity may itself be qualified or may identify a third-party

- right holder to be listed on the deed that has management and enforcement qualifications and responsibilities.
- If the furtherance of a State or local policy consistent with the purposes of ACEP is the basis for the parcel's land eligibility, the citation of such State or local policy and a narrative description of how the protection of the parcel will further such State or local policy that is consistent with ACEP.
- (vi) Identify the estimated easement value and compensation costs and non-Federal share information for the individual parcel (see section 528.43 below for cost-share assistance and match requirements).
- (vii) Identify the role of each legal entity involved in the individual parcel transaction as an eligible entity, co-holder, or third-party right holder; the estimated cash contribution for payment of easement compensation to the landowner from each contributing legal entity; and the proposed distribution of estimated Federal share to the eligible entities identified.
- (viii) Document whether the eligible entity cash contribution for payment of easement compensation to the landowner will comprise less than 10 percent of the fair market value of an agricultural land easement, and in such cases, provide additional evidence as NRCS may require to determine whether the eligible entity has the capacity to manage, monitor, and enforce an agricultural land easement if acquired on the parcel. Such evidence may include specific documentation related to the eligible entity's funding or staff resources for the management, monitoring, and enforcement of the individual parcel for which this threshold will not be met.
- (ix) Include maps or GIS shapefiles showing the following:
- The location of the parcel
 - The proposed parcel boundaries and larger property boundaries if different than the parcel boundaries
 - The location of other protected land in relation to parcel, if applicable
 - Each of the following that are applicable:
 - The location and acres of the prime, unique, or statewide and locally important soil in each parcel
 - The location and acres of lands where grazing uses and related conservation values would be protected
 - The location and acres of grassland of special environmental significance
 - The location, number, and acreage of historical or archaeological sites proposed to be protected
- (x) Provide evidence and map of legal and physical access to the parcel including the location of the parcel, the location, route number, and name of the public road from which the parcel will be accessed, and the access route between the public road and the parcel. The map should note where and if third-party lands are crossed.
- (xi) Provide a narrative statement or map showing the parcel's accessibility to agricultural markets.
- (xii) Provide a narrative statement or map showing the parcel's access to existing agricultural infrastructure, and to on-farm, off-farm, and other support systems.
- (xiii) Provide a narrative statement or map showing the threat of conversion or fragmentation (either from nonagricultural development or conversion of grassland to nongrassland uses) for each parcel.

- (xiv) Provide information on the ownership of any subsurface mineral rights indicating whether the rights are held by the landowner or held by a third party and any required water rights for each parcel.
 - (xv) Provide a copy of any phase-I environmental site assessments, if available.
 - (xvi) Provide a copy of appraisal reports or title reports for the parcel, if available.
 - (xvii) Provide a copy of draft agricultural land easement deed, if available.
- (4) For eligible entities applying for ACEP-ALE cost-share assistance through an ACEP-ALE cooperative agreement or ACEP-ALE grant agreement for certified entities, the following information and documents must also be submitted at the time the entity application is submitted:
- (i) Identify on the entity application (NRCS-CPA-41, or successor form) the:
 - Type of parcels that will be associated with the ALE-agreement as either “general ALE parcels” or “Grasslands of Special Environmental Significance parcels.” Only one parcel type may be associated with an individual entity application for an ACEP-ALE cooperative or grant agreement.
 - Requested transaction type that will be used for parcel acquisition as either a “Standard ALE transaction” or a “Buy-Protect-Sell transaction.” Only one transaction type may be associated with an individual entity application for an ACEP-ALE cooperative or grant agreement.
 - Based on the estimated cost information from each parcel sheet associated with the entity application, identify the cumulative estimated amount of each legal entity’s cash contribution (for payment of easement compensation to the landowner) and identify the proposed distribution of the cumulative estimated Federal share to the eligible entities.
 - (ii) Standard Form (SF) 424, “Application for Federal Assistance”
 - (iii) SF-424A, “Budget Information for Non-Construction Programs”
 - (iv) SF-424B, “Assurances Non-Construction Programs”
 - (v) Form AD-3030, “Representation Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,” if applicable
 - (vi) SF-LLL, “Disclosure of Lobbying Activities”
- (5) In States authorized to use ACEP-ALE program agreements, for entities applying for an ACEP-ALE program agreement or submitting a parcel sheet application (NRCS-CPA-41A or successor form) to request funding for an individual parcel associated with an ACEP-ALE program agreement, the following information and documents must also be submitted:
- (i) At the time the entity application (NRCS-CPA-41 or successor form) is submitted, a comprehensive list of all potential eligible entities, co-holders, and third-party right holders and the anticipated roles for each.
 - (ii) For each individual parcel sheet (NRCS-CPA-41A or successor form), the specific list of eligible entities, co-holders and third-party right holders that will be involved with the individual parcel transaction, and the authorized signatures of those legal entities whose acknowledgement is required on the parcel sheet application.
 - (iii) Additional information as required in specific ACEP-ALE program agreement guidance provided to States authorized to use such agreements.
- (6) Applications for buy-protect-sell transaction must include:
- (i) The information required for all ALE applications, unless otherwise specified.
 - (ii) The specific information required based on the ALE-agreement type.
 - (iii) The additional information specific to the proposed buy-protect-sell transaction as identified in section 528.33D(2) above, and in specific guidance provided to States for buy-protect-sell transactions.

B. Submitting and Accepting Applications

Entities may submit applications in paper copy or electronically. Applications received after an application cutoff date and incomplete applications will not be ranked or considered for inclusion in the funding cycle covered by the application cutoff date. Complete applications received after the application cutoff date may be considered in the next announced application period.

528.43 ACEP-ALE Cost-Share Assistance and Match Requirements

A. Overview of ACEP-ALE Federal Share, Match Requirements, and Waiver Process

- (1) The ACEP-ALE cost-share assistance and match requirement must be explained to the entity applicants at the time of application.
- (2) ACEP-ALE cost-share assistance (Federal share) will not exceed 50 percent of the fair market value of the agricultural land easement as determined using an approved methodology described in subpart F, section 528.53 of this part. The eligible entity must provide a non-Federal share in an amount that is at least equivalent to the Federal share.
- (3) NRCS may increase the Federal share to an amount not to exceed 75 percent of the fair market value of the agricultural land easement if all the following apply:
 - (i) The eligible entity has identified on the application that the offered parcel is applying for funding consideration as a Grassland of Special Environmental Significance (GSS).
 - (ii) NRCS determines prior to selection for funding that the lands to be enrolled are GSS as defined in subpart T of this part and meet all associated GSS land eligibility requirements.
 - (iii) The eligible entity agrees to incorporate and enforce additional deed restrictions to manage and enforce the easement to ensure the GSS attributes are protected.
 - (iv) The eligible entity provides the non-Federal share as required for GSS enrollments.

Note: For ALE-agreements that are cooperative or grant agreements, the individual agreement may include only one parcel type, either general ALE parcels or GSS parcels. The GSS land eligibility determination and any associated increase in the Federal share must be documented by NRCS and reflected by using the GSS-specific ACEP-ALE cooperative or grant agreement terms.

- (4) The amounts and permitted sources of funds that may comprise the eligible entity's non-Federal share is subject to the requirements of the Farm Bill under which the parcel is enrolled which is based on the fiscal year in which the ALE-agreement is originally executed by all parties. Parcels funded through ALE-agreements originally executed in fiscal years 2014 through 2018, under the authorities of the 2014 Farm Bill, are subject to the cost-share assistance and match requirements described below in paragraphs C and D of this section. Parcels funded pursuant to ALE-agreements executed in fiscal year 2019 and later, under the authorities of the 2018 Farm Bill, are subject to the cost-share assistance and match requirements described in paragraph B below.

B. 2018 Farm Bill: Cost-Share Assistance and Match Requirements:

- (1) The Federal share is limited to 50 percent of the fair market value of the agricultural land easement. The eligible entity must provide a non-Federal share in an amount that is at least equivalent to the Federal share. Therefore, for general ALE

- enrollments, the amount that may be provided as the Federal share may not exceed the lesser of 50 percent of the fair market value of the agricultural land easement or an amount equivalent to the non-Federal share provided by the eligible entity.
- (2) NRCS may increase the Federal share to an amount not to exceed 75 percent of the fair market value of the agricultural land easement for a parcel determined by NRCS to meet the requirements as a GSS enrollment as described in paragraph A(3) above. For GSS enrollments, the eligible entity must provide a non-Federal share that is at least equivalent to the Federal share or comprises the remainder of the fair market value of the agricultural land easement, whichever is less.
 - (3) For each parcel, the non-Federal share provided by the eligible entity may be comprised of—
 - (i) The eligible entity’s own cash resources for payment of easement compensation to the landowner. These cash resources must come from a source other than the landowner. Examples of acceptable entity cash resources include, but are not limited to, funds held in an entity account that are not otherwise committed or restricted, funds awarded to the entity, but not necessarily held in an entity account, and loans obtained by the entity for the purpose of acquiring conservation easements.
 - (ii) A landowner donation toward the easement value in the form of a charitable donation or qualified conservation contribution as defined by section 170(h) of the Internal Revenue Code of 1986 provided by the landowner that results in an easement purchase price that is lower than the appraised fair market value of the agricultural land easement (also known as a bargain sale). There is no requirement for landowner donations under ACEP-ALE and NRCS provides no tax advice or guidance as to the ability of a landowner donation to qualify for favorable tax treatment.
 - (iii) The procured costs paid by the eligible entity to a third-party for the following items: an appraisal, legal boundary survey of the easement area, full phase-I environmental site assessment that meets the requirements of 40 CFR Part 312, title commitment or report, title insurance, or closing cost. The procured report or service must meet the NRCS standards or requirements as identified in the ALE-agreement.
 - (iv) The eligible entity’s contribution of up to 2 percent of the fair market value of the agricultural land easement for easement stewardship and monitoring costs, from sources other than the landowner.
 - (4) The determination of the fair market value of the agricultural land easement does not include any amounts for other costs, such as procured costs included in the non-Federal share, or other entity or landowner costs related to the acquisition or management.
 - (5) In general, the eligible entity cash contribution (item (3)(i) above) and the landowner donation (item (3)(ii) above) will be sufficient to meet the requirement for the non-Federal share to be at least equivalent to the Federal share or for GSS enrollments to comprise the remainder between the appraised fair market value of the agricultural land easement and the Federal share. If the combined eligible entity cash contribution (item (3)(i) above) and the landowner donation (item (3)(ii) above) amounts do not meet the minimum non-Federal share amount required based on the enrollment type and the requested Federal share, the procured costs (item (3)(iii) above) may be included in the amounts relied upon to satisfy the minimum non-Federal share amount. Only if the combined eligible entity cash contribution (item (3)(i) above), the landowner donation (item (3)(ii) above), and the procured cost (item (3)(iii) above) amounts do not meet the minimum non-Federal share

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requirement may the eligible entity’s contribution of up to 2 percent of the fair market value of the agricultural land easement for stewardship and monitoring costs (item (3)(iv) above) be included in the amounts relied upon to meet the minimum non-Federal share amount.

Example 1: Determination of the Amount of the Federal Share for General-ALE Enrollments:

FMV of ALE	\$500,000	\$500,000	\$500,000	\$500,000
Eligible Entity Cash (item (2)(i))	100,000	20,000	70,000	200,000
Landowner Donation (item (2)(ii))	150,000	200,000	100,000	200,000
Procured Costs Paid by Entity (item (2)(iii))	Not included	30,000	20,000	Not Included
Stewardship/Monitoring Costs (item (2)(iv))	Not included	Not Included	10,000	Not Included
Total Non-Federal Share	250,000	250,000	200,000	400,000
Total Federal Share for General ALE	250,000	250,000	200,000	100,000
Eligible Entity Cash Contribution as Percentage of FMV	20%	4%* (see (B)(6))	14%	40%

Example 2: Determination of the Amount of the Federal Share for ALE-GSS Enrollments:

FMV of ALE	\$500,000	\$500,000	\$500,000	\$500,000
Eligible Entity Cash (item (2)(i))	62,500	25,000	120,000	150,000
Landowner Donation (item (2)(ii))	62,500	70,000	100,000	150,000
Procured Costs Paid by Entity (item (2)(iii))	Not included	30,000	20,000	Not Included
Stewardship/Monitoring Costs (item (2)(iv))	Not included	Not Included	10,000	Not Included
Total Non-Federal Share	125,000	125,000	250,000	300,000
Total Federal Share for ALE-GSS	375,000	375,000	250,000	200,000
Eligible Entity Cash Contribution as Percentage of FMV	13%	5%* (see (B)(6))	24%	40%

- (6) At the time of application, the eligible entity must provide the following for each parcel:
- (i) The estimated acres
 - (ii) The estimated fair market value of the agricultural land easement
 - (iii) The estimated non-Federal share provide by the eligible entity as follows:
 - Amount of the eligible entity’s own cash resources for payment of easement compensation to the landowner (item (3)(i) above)
 - Amount of landowner donation toward the easement value (item (3)(ii) above)
 - Procured cost amounts (item (3)(iii) above), only required if the estimated entity cash contribution and landowner donation amounts when combined are less than the requested Federal share

- Stewardship/monitoring costs, up to 2 percent of the easement value (item (3)(iv) above), only required if the estimated entity cash contribution, landowner donation, and procured cost amounts combined are less than the requested Federal share

- (iv) The requested Federal share
- (v) The estimated purchase price

Note: Final amounts of the above-listed items, along with required documentation to support the costs, must be submitted to NRCS by the eligible entity as specified in the terms of the ALE-agreement for parcels selected for funding.

- (7) The eligible entity is not required to provide NRCS at the time of application, separate evidence of availability funds for acquisition of the easement, unless the eligible entity's own cash resources that will be put toward payment of easement compensation to the landowner (item (3)(i) above) for an individual parcel will be less than 10 percent of the fair market value of the agricultural land easement. For such parcels, the eligible entity must provide NRCS with specific evidence of funding or capacity available to manage, monitor, and enforce the easement. Evidence of funding or capacity for management, monitoring, or enforcement of the parcel must be provided at the time of application based on the estimated amounts or at the time the payment request is submitted based on the final actual amounts.
- (8) Inclusion of procured costs are limited to the actual cost paid to the third party for the provision of the report or service that meets the applicable ACEP-ALE requirements. To the extent the eligible entity will rely on allowable procured costs to meet the minimum non-Federal share amount for an individual parcel, the eligible entity must provide an estimate of these costs at the time of application. A final listing of the amounts paid (or owed) for these items must be provided for each parcel on the "Statement to Confirm Matching Funds" (Forms NRCS-CPA-230 (2018 Farm Bill version)). Copies of paid invoices or receipts, or for advance payments, outstanding invoices, are only required for the procured items ultimately relied upon to meet the minimum non-Federal share amount.
- (9) Prohibited sources of the non-Federal share include but are not limited to—
 - (i) Land from another parcel.
 - (ii) Entity's own administrative costs associated with obtaining, reviewing, correcting, or otherwise procuring acquisition-related items.
 - (iii) Entity's own administrative costs associated with agricultural land easement acquisition.
 - (iv) Costs associated with planning and development of baseline documentation reports,
 - (v) Stewardship and monitoring costs above the 2-percent limitation.
 - (vi) Amounts contributed by the landowner for anything other than the landowner's charitable donation or qualified conservation contribution toward the easement value.

C. 2014 Farm Bill Enrollments: Cost-Share Assistance and Match Requirements:

- (1) The eligible entity must provide a non-Federal share in an amount that is at least equivalent to the Federal share. An eligible entity may include as part of its share a charitable donation or qualified conservation contribution from the landowner if the eligible entity contributes its own cash resources in an amount that is at least 50 percent of the Federal share.
- (2) A landowner donation may be a charitable donation or qualified conservation contribution as defined by section 170(h) of the Internal Revenue Code of 1986,

- provided by the landowner. There is no requirement for landowner donations under ACEP-ALE and NRCS provides no tax advice or guidance as to the ability of a landowner donation to qualify for favorable tax treatment.
- (3) The amount contributed by the entity that is not a charitable donation or qualified conservation contribution from the landowner must be cash and must come from sources other than the landowner. Under no circumstances may the eligible entity acquire its minimum cash contribution through additional cash contributions or payments made by the landowner, loans provided by the landowner, “monitoring or stewardship” fees, “acquisition” fees, or other such fees charged to the landowner. Furthermore, because the entity contribution must be cash, other examples of prohibited sources of the entity’s share include—
 - (i) Land from another parcel.
 - (ii) In-kind contributions, including administrative costs associated with agricultural land easement acquisition (e.g., surveys, appraisals, legal expenditures).
 - (4) ACEP-ALE authorizes two exceptions under NRCS may authorize adjustments to the cost-share assistance and match requirements:
 - (i) The Federal share amount may be adjusted for grassland of special environmental significance as determined by NRCS (see paragraph A(3) above). For GSS enrollments, an eligible entity will share in the cost of purchasing an agricultural land easement in an amount that is no less than 33.33 percent of the Federal share. The eligible entity share may include a qualified landowner contribution if the eligible entity contributes its own cash resources in an amount that is at least 16.67 percent of the Federal share.
 - (ii) The eligible entity cash contribution requirement may be adjusted for projects of special significance (see paragraph D below).
 - (5) As a condition of entity eligibility, the entity must be able to document and certify that they have the required funds available at the time of application. Examples of acceptable cash contributions include, but are not limited to, funds held in an entity account that are not otherwise committed or restricted, funds awarded to the entity, but not necessarily held in an entity account, and loans obtained by the entity for the purpose of acquiring conservation easements.
 - (6) If the entity’s ability to meet the match requirement at time of application is contingent upon the receipt of a waiver of the entity cash contribution requirement for a project of special significance, then the waiver request along with all associated documentation for each parcel on which the waiver is sought must be submitted at the time of application.

D. 2014 Farm Bill Enrollments: Waiver to Adjust the Eligible Entity Cash Contribution Requirement for Projects of Special Significance

- (1) The State conservationist may waive a portion of the applicable eligible entity cash contribution requirement for parcels that NRCS determines are of projects of special significance. A waiver of the entity cash contribution requirement does not result in an increase in the applicable Federal share and may only be authorized if NRCS determines that—
 - (i) The transaction is subject to an increase in the private landowner donation that is equal to the amount of the waiver.
 - (ii) The increase in the landowner donation is voluntary.
 - (iii) The property is in active agricultural production which means that the land is in agricultural use as defined in subpart T of this part, and that agricultural- or forest-related products or livestock are being produced or have been produced within 1 year of the date of application.

- (iv) The accompanying agricultural land easement plan will address the protection of the attributes resulting in the parcel being a project of special significance.
 - (v) The eligible entity contributes its own cash resources in an amount that is—
 - For projects of special significance that are not GSS, at least 25 percent of the amount of the Federal share, or at least 10 percent of the Federal share in States that offer a State tax credit for a qualified conservation contribution on agricultural land.
 - For enrollment on lands that enrolled as GSS, at least 8.33 percent of the amount of the Federal share, or at least 3.33 percent of the Federal share in States that offer a State tax credit for a qualified conservation contribution on agricultural land.
 - (vi) The application is a project of special significance and the parcel meets one or more of the following criteria:
 - Listed on the National Register of Historic Places or is a traditional cultural property
 - Located within a micropolitan statistical area and 50 percent of the adjacent land is agricultural land
 - Located within a metropolitan statistical area
 - An education or demonstration farm or ranch focused on agricultural production and natural resource conservation
 - A farm or ranch operated for the purpose of increasing participation in agriculture and natural resource conservation by underserved communities, veterans, beginning farmers or ranchers, or disabled farmers or ranchers
 - The subject of a conservation buyer transaction where a member of underserved community, veteran, beginning farmer or rancher, or a disabled farmer or rancher has a valid purchase and sale agreement to acquire the property subject to an agricultural land easement
 - One of several parcels within a special project area being offered for enrollment in that fiscal year that are being protected pursuant to a comprehensive plan approved by the State conservationist, with input from the State technical committee, for the permanent protection of a large block of farm or ranch land
 - Part of a comprehensive plan to facilitate transfers to new and beginning farmers approved by the State conservationist, with input from the State technical committee, for the permanent protection of a block of farm or ranch land that, if implemented, will facilitate the transfer of farmland to a next-generation farmer
 - Has an existing NRCS resource management system (RMS) level plan with NRCS conservation practices applied or under contract to be applied in accordance with NRCS standards and specifications, and the landowner has agreed that the ALE plan will be developed at the RMS level in accordance with the purposes for which the ALE easement is being acquired
 - Officially designated as having been in the same family ownership for over 100 years
 - Meets the definition of grasslands of special environmental significance
- (2) The request for a waiver must be submitted on an individual parcel basis and the following documentation must be provided to the NRCS State conservationist by the entity:
- (i) A written request for a waiver from the entity

- (ii) A signed letter from the landowner confirming that the increase in the landowner donation is voluntary
 - (iii) Evidence that the land is in active agricultural production
 - (iv) Evidence that the parcel meets the criteria for projects of special significance outlined in the “Eligible Entity Cash Contribution Requirement Waiver” worksheet (see subpart U of this part)
 - (v) For entities requesting a waiver to 10 percent of the Federal share for a general ACEP-ALE enrollment or 3.33 percent of the Federal share for an ACEP-ALE-GSS enrollment, the entity must provide documentation of the State tax program that provides State tax credits for qualified conservation contributions on agricultural land
- (3) Requests for a waiver of the eligible entity cash contribution requirement may be submitted at the time of application or once the ALE-agreement is in place.
- (i) As a condition of eligibility, the entity must be able to document that it has sufficient cash match available at the time of application. If an entity is relying on the approval of a waiver to meet its cash match requirement to be determined eligible, such waiver request must be submitted to NRCS by the entity at the time of application. All such waiver requests and supporting documentation must be submitted, reviewed, and determinations made prior to obligating funds to the ALE-agreement. If waiver requests are incomplete, late, or denied, then at the time of fund obligation, the entity must have sufficient cash match to meet the standard entity cash contribution requirements to be eligible for enrollment.
 - (ii) An eligible entity may also request a waiver of the entity cash contribution requirement after an ALE-agreement has been entered into. Those waiver requests must be submitted at least 90 days prior to the planned easement closing date. The waiver review and determinations must be made prior to the entity requesting payment. If waiver requests are late, incomplete, or denied, the entity must have sufficient cash match to meet the standard entity cash contribution requirements to acquire the easement.
- (4) When NRCS receives a complete request from an eligible entity to waive the cash contribution requirement prior to the required deadlines for a parcel that meets land and landowner eligibility requirements and ranks high enough to be funded, NRCS will review the request using the “Eligible Entity Cash Contribution Reduction Waiver Request” worksheet (see subpart U of this part). A first-level reviewer designated by the State conservationist will review the request and materials and complete the worksheet. The completed worksheet will be reviewed by a second-level reviewer before being provided to the State conservationist for final review.
- (5) The authority to provide a waiver of the eligible entity cash contribution requirement is delegated to the State conservationist and may not be further delegated. The State conservationist must review the request, worksheet, and recommendations of the first- and second-level reviewers to ensure that the project is of special significance, that the requirements are met, the worksheet is complete, and that the waiver of the eligible entity cash contribution requirement is justified.
- (6) The State conservationist must provide the eligible entity written notification of their decision, with appropriate appeal rights if the waiver is denied. A copy of any approved waiver requests must be retained in both the ALE-agreement and individual easement case file and uploaded to the easement business tool (e.g., NEST). A copy of the approved waiver must be attached to the “Statement to Confirm Matching Funds” (Forms NRCS-CPA-230 or successor form), submitted for each parcel at the time payment is requested. The waiver of the eligible entity cash contribution

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requirement is not transferrable and is only applicable to the parcel for which the waiver was approved.

- (7) State conservationists are not required to review entity cash contribution waiver requests for applications that are ineligible or not selected for funding. Waiver requests are subject to the waiver requirements in place during the fiscal year the parcel is selected for funding.
- (8) NHQ will conduct spot checks of the waiver decision packages by States. States will be required to submit completed waiver decision packages for parcels identified by NHQ.