

## Part 527 – Easement Common Provisions

### Subpart Q – Condition

#### 527.160 General

- A. The easement condition represents the state of the easement as it relates to compliance with deed terms, management plans, and adherence to policy.
- B. The easement condition is annually established based on monitoring information recorded in the business tool. However, easement condition can also be set by a potential or determined violation.
- C. Conducting a determination of condition on a fiscal year basis is mandatory for all stewardship land easements. The first year condition is to be established for an easement the fiscal year following easement closing.
- D. The condition is system-generated based upon the information entered into the Easement Business Tool.
- E. The condition can be established as a result of monitoring or violation determination.
- F. States should use the system-generated reports on easement condition status to prioritize needed follow up, track overall program delivery, and determine appropriate monitoring method and any enforcement or remediation actions needed.

#### 527.161 Condition Status

A. The Easement Business Tool will generate an easement condition status as green, yellow, or red based on responses that are provided for monitoring record or violation determination. The meaning of each easement condition status is as follows:

B. **Condition Green.**—Easements are being maintained in accordance with all terms and conditions.

- (1) The most recent assessment of the easement indicates that—
  - (i) All easement terms and conditions are being met.
  - (ii) The plan of operations or management plans are being followed.
  - (iii) Special resource concerns (such as threatened or endangered species, cultural resources, or invasive species) are being adequately addressed.
  - (iv) All compatible-use authorizations (CUAs) are applicable and current.
  - (v) The landowner is compliant with the terms and conditions of all CUAs.
  - (vi) No encroachments or violations, including third-party violations, are occurring.
- (2) When all the above items are met, the condition status of the easement is Green, indicating that no additional compliance-related action is needed on the easement.

C. **Condition Yellow.**—Easements with administrative issues, potential violations, or level-I violations.

- (1) Administrative issues are identified when NRCS is administering the easement in accordance with policy and any associated activity occurring on or off the easement does not have negative impacts on the easement.

Examples include the following:

- CUA authorized by NRCS but without completing the environmental compliance documentation.

- Expired CUA is being followed by landowner and the landowner has requested a new CUA, but NRCS has not responded to the landowner.
  - CUA granted and being followed, but there was an error on the CUA side as without an expiration date or other administrative issue.
  - NRCS was notified of landownership changes but NRCS has not completed the site visit to update the required conservation plans.
  - Eligible entity has not submitted the annual monitoring report within the 12-month period.
  - Evidence of a potential spill or release of hazardous substances is observed during an offsite monitoring.
- (2) Potential violations are issues detected during monitoring, reported observations, or other agency notification of onsite conditions.

Examples include the following:

- Neighbor calls field office to report cropping on wetland easement.
  - Mowing observed on aerial imagery during offsite monitoring and there is not an approved or valid CUA.
  - Review of environmental compliance reports that indicate a hazardous substance spill on easement without conducting a field investigation.
  - NRCS identified potential violation and conducting preliminary investigation to confirm.
  - Activity occurring outside the scope of an active, valid CUA.
- (3) Any violations identified on the “Easement Violations Worksheet” with recommendation of level I or II where the State conservationist, or delegate, has not made a final determination of violation level.
- (4) Any violation where the State conservationist, or delegate, has made a final determination of a level-I violation as defined in Title 440, Conservation Programs Manual, Part 527, Subpart S, “Violations and Enforcement.”
- (5) When the condition of the easement is yellow, it is an indication that additional action is needed on the easement or administrative action to bring it into compliance.

**D. Condition Red** – Easements with documented violations that require remediation actions.

- (1) Any violation where the State conservationist, or delegate, has made a final determination of a level-II violation as defined in Title 440, Conservation Programs Manual, Part 527, Subpart S, “Violations and Enforcement.”
- (2) Evidence or knowledge of a spill or release of hazardous substance, petroleum products, or other potential hazardous material that has been field confirmed.
- (3) An easement with a condition status of “yellow” for more than a 12-months without action, will be adjusted to a condition status of “red”.
- (4) An easement condition status of “red”, indicates that additional action is needed on the easement to remediate the violation, address a contamination issue, enforcement action, etc. and bring the easement into compliance.

**E. Condition Not-Assessed.**—Easements that had an undetermined condition.

- (1) If monitoring is not completed within the fiscal year, a “not-assessed” condition will be created in Easement Business Tool before the end of the current fiscal year in which monitoring is required. This will result in condition status of “not-assessed”.
- (2) If an onsite monitoring is required within that fiscal year but a different monitoring method was completed, a “not-assessed” condition will be created in Easement Business Tool. This will result in the condition status of “not-assessed”.

**F. Condition Monitoring Not Required**

If the easement closed in the current fiscal year, then monitoring is not required, and a condition status of “monitoring not required” will be created in the Easement Business Tool.

**527.162 Reporting**

- A. The condition statuses generated by the Easement Business Tool are used as the basis for meeting NRCS Stewardship Lands reporting requirements.
- B. Reports from the Easement Business Tool are also available for system users. These reports can be used to assess which easements still need to be monitored in a fiscal year, what monitoring type should be used in a fiscal year, other general program implementation and workload management.
- C. Easements held by the United States are considered Stewardship Lands, and as such must be accounted for as part of the agency’s annual financial accountability reporting.
- D. If a monitoring record is not entered into the Easement Business Tool by the end of the fiscal year, the condition will not be set, and the record will be reported as ‘not-assessed’ for that fiscal year. If the monitoring record exists, the record must be entered retroactively during the next fiscal year, but it will not change the condition that was reported for that fiscal year, however, the current condition will be recorded.