Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart A – ACEP General Information

528.0 Purpose

A. This part provides general information about ACEP, the sources of ACEP authority, and roles and responsibilities.

B. ACEP consolidates the purposes of the Farm and Ranch Lands Protection Program (FRPP), the Grassland Reserve Program (GRP), and the Wetlands Reserve Program (WRP) into one easement program with two components. The two components of ACEP are agricultural land easements (ACEP-ALE) and wetland reserve easements (ACEP-WRE). This part is organized by—

(1) ACEP provisions that affect the entire program, found in part 528, subparts A through C and R through U.
(2) ACEP-ALE provisions that affect only the agricultural land easement component, found in part 528, subparts D through J.
(3) ACEP-WRE provisions that affect only the wetland reserve easement component, found in part 528, subparts K through Q.

C. The purposes of ACEP are to restore, protect, and enhance wetlands on eligible land; protect the agricultural viability and related conservation values of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and protect grazing uses and related conservation values by restoring or conserving eligible land.

D. Under ACEP-ALE, NRCS provides cost-share assistance to eligible entities to purchase agricultural land easements from eligible landowners to protect the agricultural use, including grazing uses, and related conservation values on eligible lands. Under ACEP-WRE, NRCS protects wetlands by purchasing directly from eligible landowners a reserved interest in eligible land or entering into 30-year contracts on acreage owned by Indian Tribes, in each case providing for the restoration, enhancement, and protection of wetlands and associated habitats.

E. ACEP repeals FRPP, GRP, and WRP but maintains the purposes of these predecessor easement programs. Easements and 30-year contracts previously enrolled under FRPP, GRP, and WRP, as well as easements previously enrolled in the previously repealed Farmland Protection Program (FPP) and the Emergency Wetlands Reserve Program (EWRP), are considered enrolled in ACEP.

F. The provisions of this part are applicable to all ACEP enrollments unless specifically identified as applicable only to enrollments under a specific program component or specific Farm Bill, as follows:

(1) Existing FRPP (including predecessor programs), GRP, and WRP (including EWRP) easements, 30-year contracts, and agreements remain valid and enforceable, and subject to the legal framework in place at the time of enrollment, except that the long-term stewardship and management of these easements and 30-year contract lands, and ACEP funding made available for implementation, will be in accordance with the applicable provisions of this part.
(2) Provisions identified as applicable to enrollments under the Agricultural Act of 2014 (2014 Farm Bill), are applicable to all agreements, contracts, parcels, and easements enrolled or executed under the authorities of the 2014 Farm Bill. This includes all easements executed pursuant to such enrollment agreements and contracts, as well as any amendments, modifications, or other changes to such agreements or contracts irrespective of when those easements, amendments, or modifications are executed or funded.

(3) Provisions identified as applicable to enrollments under the Agriculture Improvement Act of 2018 (2018 Farm Bill), are applicable to all agreements, contracts, parcels, and easements executed or funded under the authorities of the 2018 Farm Bill.

528.1 Background

A. General Administration

NRCS administers ACEP using the funds, authorities, and facilities of the Commodity Credit Corporation (CCC). NRCS may, as appropriate, receive advice from the State technical committee and from other Federal or State agencies, conservation districts, or other organizations on program administration. No determination or recommendation by these agencies or organizations compels NRCS to take any action that NRCS determines will not serve ACEP purposes.

B. Applicability

ACEP is available to all 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

C. Waivers to National Policy

ACEP must be implemented in accordance with the applicable statutes and regulations, and the policy set forth in this manual. In limited and unusual circumstances, the NRCS Chief or Deputy Chief for Programs, as delegated, may waive policy in this part. A State conservationist may seek a waiver of this policy by sending a written request for a waiver to the Deputy Chief for Programs as follows:

(i) The request must provide adequate rationale for the waiver to national policy. The rationale should demonstrate that approving the waiver would result in a conservation easement with equal or greater conservation value, is consistent with the purposes and objectives of the policy to be waived, and the policy waiver is needed to adapt to either a specific aspect of the landowner's situation, an eligible entity's program, or the unique characteristics of the easement area.

(ii) Requested actions must be consistent with applicable statutes and regulations.

(iii) Policy waivers, unless otherwise identified in the waiver itself, will expire at the end of the fiscal year in which they are approved.

(iv) Policy waivers granted by the Deputy Chief for Programs will not be for broad requests. Policy waivers will only be granted to address requests for individual transactions or individual agreements, as applicable. Approved waivers must not be extended to transactions or agreements that were not specifically identified in the request and approval.

(v) A copy of the approved policy waiver or reference to its location will be maintained in the easement case file to which it applies and upon receipt, uploaded to the National Easement Staging Tool (NEST) or successor easement business tool.

528.2 Public Access to Data

A. Release of Personal Information

Information about ACEP applicants is generally not released to the public because individual privacy rights must be protected. The Freedom of Information Act (FOIA), Privacy Act, section 1244 of the Food Security Act of 1985, and section 1619 of the Food, Conservation, and Energy

Act of 2008 (the 2008 Act), 7 U.S.C. Section 8791, require the Federal Government to withhold certain information related to agricultural producers and others who participate in NRCS programs. Refer to Title 120, General Manual (GM), Part 408, Subpart C, "Freedom of Information Act and Privacy Act," for NRCS policy regarding confidentiality of information.

B. ACEP Applicant Information

Aggregate or statistical information about ACEP applications may be described in news releases, websites, and other tools used to inform the public.

C. ACEP Landowner Information

After NRCS has made payment for an easement, additional information is available for release. The following information about ACEP-funded transactions may be released through a FOIA request:

(i) Names of landowners of funded easements.
(ii) Address information, limited to State, city, county, or any combination of these. (Additional restrictions about the release of address information apply to some corporate and nonprofit business types. Consult 120-GM-408, for more guidance.)
(iii) ACEP payment amounts.
(iv) Other information as determined by the NRCS State or national FOIA officer in accordance with applicable statutes.

D. Geospatial Information

(1) NRCS is prohibited from disclosing geospatial information it maintains about agricultural land or operations that was collected in association with program participation. However, conservation easement boundary information may be made public as such information pertains to interests held by the United States and is not merely information provided by an agricultural producer or owner.
(2) The general public may access NRCS geospatial data from the NRCS website. Available data includes the program name, easement boundaries, centroids, and State or county boundaries.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart B – ACEP Responsibilities

528.10 Responsibilities

A. NRCS

NRCS has overall leadership for ACEP and the repealed easement programs considered enrolled in ACEP, including Farm and Ranch Lands Protection Program (FRPP), Farmland Protection Program (FPP), Grassland Reserve Program (GRP), Wetlands Reserve Program (WRP), and Emergency Wetlands Reserve Program (EWRP). NRCS is responsible for establishing regulations, policies, guidelines, and priorities for ACEP implementation, funding, and long-term monitoring and enforcement.

B. National Headquarters (NHQ) – Chief of NRCS

National leadership is provided by the Chief of NRCS and the Chief's designee. The Chief oversees all responsibilities of NRCS, including the delegation of authorities and responsibilities as appropriate. The Chief reserves decisionmaking on any ACEP matter delegated to lower organizational levels. The Chief also retains certain decisionmaking responsibilities that may not be further delegated; these include but are not limited to—

(i) Waivers of regulatory provisions.
(ii) Termination of all or a portion of an ACEP easement as a result of an approved easement administration action.
(iii) ACEP-Wetland Reserve Easements (WRE) only: waiver of the 24-month ownership requirement for specific circumstances.
(iv) ACEP-ALE only: decertification of a certified entity.

C. NHQ – Deputy Chief for Programs

The Deputy Chief for Programs reserves decision making on any ACEP matter within the Programs Deputy Area, even if delegated to lower organizational levels, and oversees all responsibilities of the Easement Programs Division (EPD). The Deputy Chief for Programs retains certain decision-making responsibilities that cannot be further delegated. These include but are not limited to—

(i) Waivers to national policy as described in section 528.1C of this part.
(ii) Specific authorization and waiver decisions as described in this part, including but not limited to:
- ACEP-ALE.—Determinations on eligible entity requests to use a valuation methodology other than the Uniform Standards of Professional Appraisal Practices (USPAP) or Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA).
- ACEP-ALE.—Authorizing the use of Program Agreements.
- ACEP-WRE.—Authorizing enrollment obligations in excess of 50 percent of the State's annual allocation for enrollments in the reservation of grazing rights option.

(iii) Other responsibilities delegated by the Chief.

D. NHQ – Easement Programs Division

Within NHQ, responsibilities delegated to the EPD director include but are not limited to—

(i) Developing and maintaining regulations, policies, guidelines, and procedures to meet the program requirements, purposes, and goals and ensuring that they are carried out.
(ii) Formulating budget information, calculating apportionment requests, developing allocations of ACEP funds to achieve national program objectives, and tracking implementation.
(iii) Monitoring and assisting with program implementation in accordance with ACEP requirements.
(iv) Developing, revising, and maintaining functionality of the national ACEP database and other business tools used for ACEP, including the National Easement Staging Tool (NEST), or successor easement business tool.
(v) Coordinating and developing program outreach material and promoting outreach to potential partners and eligible landowners.
(vi) Providing training and oversight to ensure program policy and goals are met.
(vii) Developing national ranking criteria and procedures used by the States to evaluate individual proposals or applications.
(viii) Reviewing and approving easement compensation procedures and values.
(ix) Coordinating with the USDA Office of the General Counsel (OGC) to ensure the legal sufficiency of program regulations, policies, procedures, and forms.
(x) Coordinating with the Farm Service Agency (FSA) and other national partners.
(xi) ACEP-ALE only:
- Developing and publishing template ALE-agreements and minimum deed terms for ACEP-ALE implementation.
- Review and approval of entity-specific ALE deed templates.
- Establishing criteria for eligible entity certification, maintaining a list of certified and decertified entities, providing support to States and regional conservationists in review of entity certification request packages.

(xii) ACEP-WRE only:
- Developing and publishing template ACEP-WRE agreements to purchase, warranty easement deeds, and 30-year contracts with Tribes.
- Determining reduction in the value of retained grazing rights.
- Reviewing and approving exhibit E's for ACEP-WRE reservation of grazing rights easements.

(xiii) Reviewing obligations and payment records submitted in accordance with the internal controls process.
(xiv) Coordinating with the local financial resource specialists, Farm Production and Conservation Business Center (FPAC-BC) branches, and the National Finance Center, where necessary, on obligation and payment issues.
(xv) Assisting States with easement enforcement and violation issues.
(xvi) Reviewing and making final determinations on easement administration action requests, with the exception of easement termination decisions which rest with the Chief.
(xvii) Providing direct acquisition and realty services to the States through the Easement Acquisition Branch (EAB), including management of fund allocations.
(xviii) Other responsibilities as delegated by the Chief or Deputy Chief for Programs.

E. NHQ – Regional Conservationists (RCs)

RCs are responsible for those activities as designated by the Chief or the Deputy Chief for Programs, including—

(i) Providing leadership to the States regarding administrative procedures.
(ii) Evaluating consistency between the States and coordinating across the regions regarding administrative procedures.

(iii) Evaluating overall program effectiveness at the State and regional levels and coordinating across regions.

(iv) Providing oversight and quality assurance of program implementation at the State, area, and field levels.

(v) Providing oversight to ensure program goals are met and ensuring outreach to all potential program participants, partners, and eligible landowners.

(vi) Reviewing and providing final approval of eligible entity certification requests under ACEP-ALE.

(vii) Reviewing agreements or contracts that exceed a State conservationist's approval authority or the prescribed dollar amount and providing delegations of authority for approved agreements or contract authorizations as needed.

- Review thresholds and requirements which may change periodically and vary according to the agreement type or contracting method used.
- Agreements requiring review may include, but are not limited to, ACEP-ALE cooperative agreements, ACEP-ALE grant agreements with certified eligible entities, or ACEP-WRE cooperative agreements to provide services such as surveys, restoration design and implementation, and monitoring.

  Note: ACEP-WRE agreements to purchase conservation easement (APCE) or agreements to enter contract for 30-year land use (AECLU) are subject to internal control review but are not subject to cooperative agreement review by the RCs.

(vii) Reviewing periodic summary reports from States on various program implementation matters, including, but not limited to—

- Contract and agreement status.
- 24-month waiver requests.
- Adjusted gross income waivers.
- Fund obligation.
- Easement closings.
- Restoration implementation.
- Easement monitoring and stewardship.
- 2014 Farm Bill ACEP-ALE enrollments only: eligible entity cash contribution waivers for projects of special significance.

(ix) ACEP-ALE only:

- Addressing the concerns of eligible entities with the States' administration of ACEP in coordination with the Deputy Chief for Programs.
- Reviewing ACEP-ALE entity certification request packages submitted by the State conservationist, approving or rejecting requests for certification, and notifying the requesting entity, the State conservationist, and Deputy Chief for Programs of the determination.

(x) Other responsibilities delegated by the Chief or by this part.

F. State Offices – State Conservationist

(1) State leadership is provided by the State conservationist who is ultimately responsible to ensure programs are implemented at the State level in accordance with applicable statutes, regulations, and policies. The State conservationist may delegate certain program responsibilities and functions to the State, area, and field offices, easement implementation teams, and other NRCS staff within the State. The State conservationist may enter into agreements or contracts with appropriately qualified third-parties for assistance in program delivery. Such agreements or contracts must clearly identify the roles and responsibilities of all parties and must not include authorization or delegation for a third-party non-NRCS

employee to represent themselves as an employee of NRCS, act as a final decision-maker on a programmatic matter for NRCS, or otherwise perform inherently governmental activities. The State conservationist oversees all responsibilities of program activities within the State.

(2) The State conservationist retains certain responsibilities that may not be further delegated. These responsibilities include but are not limited to the following:

(i) Serve as chairperson of the State technical committee (STC).

(ii) Delegate in writing responsibilities and approval authorities to NRCS employees at the State and local level as needed to carry out State-level responsibilities that are not strictly limited to the State conservationist.

Note: The State conservationist designates the local NRCS representatives. Any NRCS employee or group of employees serving on an interdisciplinary team may function as the local NRCS representative.

(iii) Make decisions or recommendations on issuance of waivers identified in policy related to land, landowner, and entity eligibility, where appropriate and where delegated to the State conservationist, such as—

- ACEP-WRE only: 24-month ownership waiver requests for circumstances delegated to the State conservationist.
- ACEP-ALE only: waivers to exceed the 2 percent impervious surface layer limitation.
- 2014 Farm Bill ACEP-ALE enrollments only: eligible entity cash contribution waiver requests for projects of special significance.

(iv) Select applications for funding and authorize the expenditure of easement funds to eligible participants for the acquisition of easements on eligible land through properly executed documents, including warranty easement deeds, 30-year contracts with Tribes, and ALE agreements as associated attachments.

(v) Maintain program fund integrity and accountability.

(vi) Monitor and manage program allocations and accounts consistent with allocation letters and all subsequent directives.

(vii) Certify completeness of easement data in the easement business tool (e.g., NEST) at least annually.

(viii) Ensure easements remain in compliance and required monitoring, enforcement, and remediation actions are taken pursuant to rights and interests held by the United States and certify that easement condition is reported annually in the easement business tool (e.g., NEST) for all closed easements.

(ix) Make decisions to recommend or not approve easement administration action requests. If approval is recommended, forward to EPD through the State conservationist; if approval is not recommended, notify the project proponent, landowner, and EPD of decision.

(x) Implement a quality assurance program to ensure that program objectives are met and program policies are followed by NRCS employees and third-parties operating under contracts or agreements.

(xi) Ensure self and NRCS employees have necessary skills and training to administer easement programs.

(xii) Ensure all agreements or contracts used to obtain assistance with program delivery correctly identify the roles, responsibilities, requirements, and limitations applicable to such non-NRCS staff. Ensure that such third-party, non-NRCS staff engaged to provide assistance to NRCS under such agreements or contracts are appropriately qualified and have necessary skills and training to conduct the activities identified in the agreement or contract.

(xiii) ACEP-ALE only:

- Make decisions on acceptability of alternative legal access for ACEP-ALE, as necessary.
- Review eligible entity requests for certification and make decision to recommend for approval or to deny the request.
- Notify RCs, Deputy Chief for Programs, and Chief of potential decertification actions and forward all required information.

(xiv) ACEP-WRE only:

The following authorities may be delegated as identified in the applicable section cited below.

- Execute agreements to purchase, including any extensions and supplements thereto (see subpart M, section 528.121E of this part).
- Review and approve determinations regarding compatible use authorization (CUA) requests (see subpart P, section 528.152B(6) of this part).

(xv) Other responsibilities delegated to the State conservationist by the Chief or RCs.

G. State Offices – State-Level NRCS Staff

ACEP responsibilities delegated to the State-level NRCS easement programs staff (State office) by the State conservationist may include but are not limited to the following:

(1) General Program Responsibilities

(i) Accept applications on a continuous basis, announce availability of program funds and applicable cutoff dates, conduct outreach and signups, and process applications.

(ii) Assist potential participants, including entities and landowners, in submitting proposals or applications.

(iii) Complete land, landowner, and applicable entity eligibility determinations.

(iv) Develop a weighted ranking process to prioritize all eligible applications, conduct ranking on eligible applications, and recommend prioritized eligible applications for funding.

(v) Obtain advice from the STC in establishing State-level program priorities, policies, procedures, guidelines, and matters of discretion delegated to the State conservationist (e.g., reductions in prime farmland requirements for an area of the State and exceptions to riparian length, width, and upland buffer sizes).

(vi) Obtain input from the U.S. Fish and Wildlife Service and other Federal and State-level agencies, as necessary.

(vii) Ensure necessary onsite visits occur prior to required deadlines to complete ranking, land eligibility determinations, certificates of inspection and possession, landowner interviews, the NRCS hazardous materials field inspection checklist, NRCS hazardous materials landowner interview, and any other required documents.

(viii) Establish easement compensation values, including obtaining fair market values or reviews from qualified professionals as required.

(ix) Ensure implementation, administration, and management of easements complies with Federal environmental and historic preservation laws.

(x) Develop, upload, and maintain required application and agreement information in NRCS business tools (e.g., NEST) and submit, as requested, to NHQ.

(xi) Interface, as applicable, with the EAB to enroll and acquire easements and 30-year contracts.

(xii) Submit information supplemental to the data provided in easement business tools (e.g., NEST), as requested by NHQ, that identifies resources concerns, conservation priorities, demand, capacity, and other criteria used to determine fund allocations.

(xiii) Provide and obtain necessary training to implement the program effectively and in accordance with applicable statutes, regulations, and policies.

(xiv) Coordinate with adjoining States on—

- Establishment of easement compensation values
- Technical requirements, standards, and specifications used for restoration
- Priorities and procedures for program implementation
- Sharing personnel resources where needed
- Establishing ranking criteria

(xv) Develop contracts with third-parties or agreements with other Federal agencies, State agencies, and other partners for the efficient use of personnel and other resources, including leveraging technical assistance, to meet the ACEP workload demand and achieve valuable cost-effective conservation projects.

(xvi) Ensure individuals working under contract or agreement to assist NRCS in program delivery meet skill and training requirements appropriate for the agreement and contract deliverables.

(xvii) Maintain high quality conservation treatment implementation.

(xviii) Develop State protocol for monitoring enrolled lands in accordance with 440-CPM, Part 527, Subpart P.

(xix) Review requests and materials submitted for easement administration actions as provided in this part, including providing findings and recommendation to State conservationist for referral to EPD director if approval is recommended, or for notification of required parties if approval is not recommended.

(xx) Maintain official easement case files in secure, fireproof cabinets in the State office and maintain other official physical and electronic program records and documentation as appropriate.

(xxi) Prepare necessary State policy supplements to the national policy.

(xxii) Provide periodic status reports to the RCs or EPD as requested.

(xxiii) Other activities as delegated by the State conservationist.

(2) ACEP-ALE Activities and ALE-Agreements

(i) Use the template ALE agreements and associated attachment or exhibit documents provided by NHQ to obligate ACEP-ALE funds, to ensure consistent and equitable implementation of ACEP-ALE, and coordinate with NHQ if the eligible entity requests modifications to its terms.

(ii) Manage ALE agreements as the agency's representative of the Commodity Credit Corporation (CCC) with the selected eligible entities in accordance with regulation and policy.

(iii) Maintain up-to-date information in the official agency easement database (e.g., NEST), including applications, substitute parcels, enrolled parcels in signed ALE agreements, acquired parcels, and easement monitoring efforts.

(iv) Assist eligible entities to ensure that an appropriate highly erodible land (HEL) conservation plan is developed for any portion of an ACEP-ALE parcel that is highly erodible cropland.

(v) Obtain and review a hazardous materials records search, conduct the hazardous materials landowner interview, and conduct an onsite field inspection of the parcel as described in subpart D, section 528.34 of this part.

(vi) For ACEP-ALE cooperative agreements and ACEP-ALE program agreements with noncertified eligible entities, review the agricultural land easement deed used by the eligible entity to ensure it contains the ACEP-ALE minimum deed terms as required by the terms of the ALE agreement. The review should be conducted prior to submitting the deed to EPD for approval, if required.

(vii) For all applications selected for funding, confirm onsite that the landowner has sufficient physical access and that the easement area does not have any onsite or offsite issues that would preclude or interfere with achieving program purposes.

(viii) Make determinations or coordinate with the appropriate EAB team in making determinations that the landowner has clear title and sufficient access, and ensure the landowner or the eligible entity has addressed any unacceptable encumbrances to NRCS satisfaction.

(ix) Monitor certified entities for compliance with ACEP-ALE requirements, conduct quality assurance reviews of ACEP-ALE easement transactions and monitoring, provide certified entities with notice of required remedies if issues are identified, follow procedures for remediation or decertification, and report potential violations of ACEP-ALE certification requirements to State conservationist and EPD.

(x) Monitor eligible entity monitoring and administration of ACEP-ALE-funded easements, and follow up to ensure easement enforcement activities are pursued where needed.

(3) ACEP-WRE Activities

(i) Develop and submit easement compensation packages to EPD every fiscal year, including valuation methodologies and determinations, geographic area rate caps established with advice from the STC, and documentation of rationale.

(ii) Provide information needed for appraisers or other qualified real estate professionals to conduct individual appraisals or areawide market analysis.

(iii) Conduct all easement acquisition activities or coordinate with the appropriate EAB team to acquire easements on applications selected for funding, including confirming that the landowner has clear title and sufficient access and that the easement area does not have any onsite or offsite issues that would preclude or interfere with achieving program purposes.

(iv) Coordinate with FSA, including notification of ACEP-WRE enrollment, to track county cropland caps and ensure permanent retirement of any existing cropland base acres for the land on which the easement has been obtained when WRE recording is completed.

(v) Develop the State-specific wetland restoration criteria and guidelines (WRCG) document in consultation with the State technical committee and coordination with neighboring States.

(vi) Determine method and costs for implementing restoration activities, prepare preliminary and final obligating documents for restoration, ensure restoration is completed in accordance with ACEP policy, and arrange for restoration payments to landowners, partners, or vendors.

(vii) Ensure conservation treatment is in accordance with NRCS specifications and the Field Office Technical Guide (FOTG) and all planning activities are in accordance with the Title 180, National Planning Procedures Handbook (NPPH), Part 600, and this manual.

(viii) Determine wetland ecosystems and geographic areas for the reservation of grazing rights option if applicable; develop and submit to EPD for approval the exhibit E documents for the identified wetland ecosystems and geographic areas in which the reservation of grazing rights option may be offered.

(4) Allocations, Obligations, and Payments

(i) Ensure that the ACEP cost-share and financial assistance amounts do not exceed program limits or approved compensation rates.

(ii) Coordinate with the appropriate FPAC-BC branches or the EAB team to procure services, execute contracts or agreements, obligate funds, and issue payments.

(iii) Ensure that all adjusted gross income (AGI) and highly erodible land conservation (HELC) and wetland conservation (WC) eligibility determinations and requirements have been met for the required year; at a minimum AGI and HEL/WC eligibility must be

verified prior to obligation, unless otherwise specified, and for HEL/WC again prior to every payment.

(iv) Prior to obligation and prior to every payment, ensure that all required entities provide evidence of a valid Dun and Bradstreet Data Universal Numbering System (DUNS) number and meet the Central Contractor Registration (CCR) requirements through registration or renewal in the System for Award Management (SAM) or successor registry. See subpart U of this part, for a list of entities requiring a DUNS number and SAMS registration.

(v) If not serviced by the EAB, States will conduct State-level internal control reviews for easement program obligations and payments, and prepare and submit packages to EPD for reviews of obligations and payments above the State threshold or as otherwise selected for national-level review.

(vi) Manage allocated funds, funds obligated to agreements and contracts, track financial obligations and outlays, and provide financial reports.

H. Easement Implementation Teams

(1) Easement implementation teams may be established by State conservationists to improve the consistency and efficiency of ACEP implementation.

(2) Multistate ACEP teams may be developed to perform ACEP duties across State lines.

I. Area Offices, Field Offices, and Easement Implementation Teams

(1) NRCS staff in area offices, field offices, and on easement implementation teams will perform responsibilities for ACEP as delegated by the State conservationist, which may include but are not limited to—

(i) Conducting local marketing, education, and outreach activities.

(ii) Accepting ACEP applications and complete application activities as defined by State conservationist.

(iii) Completing program eligibility determinations, especially technical and onsite land eligibility determinations, in accordance with the provisions in this part.

(iv) Completing ranking of eligible applications and certifying the project meets program objectives.

(v) Forwarding application, ranking, and supporting documentation to the State office.

(vi) Conducting onsite visits to complete environmental due diligence, certificates of inspection and possession, landowner interviews, and onsite eligibility determinations to verify the absence of offsite and onsite conditions that would preclude or interfere with the successful achievement of program objectives.

(vii) Conducting easement acquisition, restoration, monitoring, and management activities, as assigned by the State conservationist.

(viii) Completing all conservation planning activities in accordance with the National Environmental Policy Act (NEPA) of 1969, 180-NPPH, and this manual.

(ix) Providing the landowner technical assistance to comply with the terms of easement and restoration agreements.

(x) Conducting monitoring activities in accordance with the provisions of this part and 440-CPM, Part 527, Subpart P.

(xi) Maintaining ACEP records and reports sufficient for monitoring and compliance purposes.

(xii) Advising State office of potential violations, compliance, and enforcement issues.

(xiii) Coordinating with U.S. Fish and Wildlife Service (FWS), State wildlife agency, State agriculture agency, conservation district, and other appropriate agencies, organizations, or cooperating partners to provide program outreach; administration assistance; input on

restoration of the hydrologic, topographic, and vegetative conditions of enrolled land; and protection of functions and values of enrolled acres consistent with program purposes.

(xiv) ACEP-ALE

Assist with development of HEL conservation plans on any portion of an ALE parcel that contains highly erodible cropland.

(xv) ACEP-WRE

- Meeting onsite with the landowner and surveyor to identify the easement area and access route, certifying that easement or contract boundary survey is correct, and verifying boundary markers have been correctly placed.
- Completing the preliminary and final wetland reserve plan of operations (WRPO) including detailed practice designs and cost estimates.
- Arranging for the application of conservation practices and activities to ensure that practices meet standards and specifications in the FOTG.
- Certifying practice establishment for payment.
- At the time of ACEP-WRE easement enrollment, providing FSA county office notice of location and acreage of the enrollment for the purposes of tracking county cropland limitations.
- At the time of ACEP-WRE easement recording, providing FSA county office notification of easement recording, including easement recording date and easement boundary map, and acreage and location information.
- Developing compatible use authorization requests for ACEP-WRE, and updating the final WRPO and associated management plans as appropriate.

(2) Responsibilities delegated to the NRCS designated conservationist (DC) or the local NRCS representative, as determined by the State conservationist, may only be performed by employees of NRCS.

J. All NRCS Employees

NRCS employees are prohibited from servicing ACEP easements or associated agreements on land owned by the employee or members of the employee's immediate family, on land in which they or members of their immediate families have a financial interest, or where there is an appearance of or actual conflict of interest. In these situations, the State conservationist will designate an NRCS employee to provide assistance (see Title 110, General Manual, Part 405).

528.11 Other Agency Involvement

A. Office of the General Counsel (OGC) Responsibilities

(1) The national OGC assists NRCS with ACEP implementation by—
(i) Assisting with easement deed reviews as requested by NRCS NHQ.
(ii) Advising NRCS on conservation easement administration action requests.
(iii) Advising NRCS on issues that impact program implementation.
(iv) Advising on any other matters of ACEP implementation as deemed appropriate by NRCS or OGC.

(2) The regional OGC assists NRCS with ACEP implementation by—
(i) Reviewing sufficiency of title evidence related to each ACEP-WRE easement transaction and rendering preliminary and final title opinions.
(ii) Assisting with determinations of conformance with legal and statutory requirements of entity-proposed postclosing ACEP-ALE buy-protect-sell transactions.
(iii) Advising NRCS State offices on easement deed recording requirements, and activities needed to implement approved easement administration actions.

(iv) Advising NRCS State offices on enforcement of easement terms, and other actions or issues that impact program implementation.

B. Farm Service Agency Responsibilities.—FSA is responsible for—

(1) Coordinating with NRCS.
(2) Determining AGI and HEL/WC eligibility.
(3) Providing maps and additional supporting data when requested at the State and local levels.
(4) Serving on the STC.
(5) Implementing any support or administrative responsibilities determined jointly by NRCS and FSA at NHQ.
(6) Entering ACEP participant or landowner information into the Service Center Information Management System (SCIMS) or successor system (e.g., Business Partner).
(7) ACEP-WRE
(i) Assisting the landowner in completing the necessary FSA forms to retire or transfer program base acres.
(ii) Adjusting participant's base history, as required, using the easement boundary maps, acreage, and location information provided by NRCS upon easement recording.
(iii) At the State level, tracking the Conservation Reserve Program (CRP) or ACEP-WRE county cropland limitations, ACEP-WRE easement limitations, or both, and informing the State conservationist of those counties that are approaching or exceeding such limits.

C. National Finance Center (NFC) Responsibilities.—NFC assists NRCS with ACEP implementation by—

(1) Verifying the NRCS certifying authorizing officer's signature.
(2) Making payment based on the NRCS payment certification forms.
(3) Interfacing the payment data to FPAC-BC and NRCS.
(4) Contacting the appropriate CCC liaison for action when discrepancies arise with certification of NRCS payments.
(5) Entering payment information in NFC's financial system.

D. U.S. Fish and Wildlife Service.—FWS is identified in statutory and regulatory provisions as an integral partner to ACEP implementation. NRCS will include FWS in the following as applicable:

(1) Participating in the STC.
(2) Providing input on establishing priorities and ranking considerations used to evaluate applications.
(3) Reviewing requests for easement administration actions, as part of the NEPA process.
(4) ACEP-WRE
(i) Provide recommendations and input into the development and review of the State-specific WRCG document.
(ii) Assisting NRCS in restoration planning so that easement lands achieve maximum wildlife benefits and wetland values and functions, taking into consideration the cost of such restorations.
(iii) Incorporating consultation responsibilities under section 7 of the Endangered Species Act (ESA) with ACEP-WRE consultation actions.
(iv) Providing recommendations for NRCS consideration regarding the timing, location, duration, frequency, and intensity of compatible uses so that these uses further the protection and enhancement of the wetlands and other associated ecological values of the easement lands.
(v) Providing recommendations for NRCS consideration for development of easement management plans, including grazing management plans developed under the reservation of grazing rights enrollment option.

(vi) Providing assistance, through an appropriate agreement or other mechanism, in areas of ACEP-WRE implementation where it is in the best interest of the program (e.g., efforts to deliver ACEP-WRE restoration projects in cooperation with FWS Partners for Fish and Wildlife Program efforts).

Note: Consultation with FWS in the context of the above-listed items (except item 4(iii)) such as ranking and prioritization considerations, restoration planning, participation in the STC, recommendations on compatible uses, reviewing easement administration action requests, and other general engagement of the FWS on ACEP implementation, is NRCS seeking the assistance, input, and expertise of FWS as a partner; it is not formal consultation under the ESA. It may be determined during the development of the preliminary and final WRPO for a specific easement, authorization of a specific CUA, or review of an easement administration action request that informal or formal consultation with FWS under the ESA is necessary to address the effects of the proposed actions on the easement area. An individual determination that consultation with FWS under the ESA (formal or informal) is necessary to meet regulatory ESA and NEPA requirements is separate from NRCS seeking FWS participation and input on matters of eligibility, ranking, restoration, management, and general program implementation issues. In regard to the latter, States may coordinate with or obtain input from FWS in different ways, and States should document in their files the input received from FWS or if no input received, document that FWS input was sought.

E. Other Federal, State, and Cooperating Partners.—Other Federal agencies, State wildlife or agricultural agencies, conservation districts, and other entities with appropriate expertise may—

(1) Provide recommendations for ranking and prioritization criteria, except if such organization or entity is seeking or will seek financial assistance through ACEP, it may not provide recommendations on ACEP ranking priority criteria.
(2) Serve on the STC.
(3) Identify program opportunities.
(4) Provide assistance, through an appropriate agreement or other mechanism, in areas of ACEP implementation where NRCS determines it to be in the best interest of the program.

528.12 Role of the State Technical Committee (STC)

A. The State conservationist must fully consider the recommendations of the STC but is not bound by these recommendations when establishing State-level program procedures, guidelines, or priorities (see 7 CFR Part 610, Subpart C). The STC is—

(1) Chaired by the State conservationist and serves in an advisory capacity in accordance with 440-CPM, Part 501, Subpart C, and the policy set forth here.
(2) Composed of Federal, State, or local agency representatives, commodity groups, cooperative extension, university or academic professionals, conservation organizations, nonprofit groups, agricultural producers, nonindustrial private forest landowners, and other professionals that represent a variety of disciplines in soil, water, wetlands, plant, and wildlife sciences.

B. State Technical Committee Responsibilities.—The STC provides the State conservationist with technical information, analysis, and recommendations regarding implementation of the ACEP on the following matters:

(1) Developing and updating State ranking criteria and procedures.
(2) Identifying priority resource concerns or land treatment areas to focus program implementation at the State level.

(3) Other technical issues, which may include but are not limited to operation and maintenance criteria, easement management, and long-term monitoring procedures.

(4) ACEP-ALE

(i) Recommending additional land eligibility or prioritization parameters to focus ACEP-ALE enrollment in highest-priority areas of the State and on projects that will yield the highest conservation benefits.

(ii) Assists in identifying highly sensitive natural resources appropriate for consideration under the "Grassland of Special Environmental Significance" enrollment option.

(5) ACEP-WRE

(i) Recommending a list of eligible practices for ACEP-WRE.

(ii) Reviewing proposed geographic area rate caps for use in determining ACEP-WRE easement compensation values.

(iii) Assisting in the development and review of the State-specific WRCG document.

(iv) Evaluating unique wetland complexes within the State to determine if they are consistent with ACEP-WRE national eligibility criteria. Examples of unique wetland complexes include but are not limited to pocosins, prairie potholes, playas, vernal pools, fens, bogs, or ridge, and swale floodplain complexes.

(v) Identifying areas of consideration for reservation of grazing rights option of ACEP-WRE, if applicable.

(vi) Establishing guidelines for authorization of compatible uses on ACEP-WRE easements.

C. Specialized Subcommittees

(1) The State conservationist may convene a specialized subcommittee of the STC to provide technical input in the development of State ranking criteria, identification of lands of statewide importance, special significance, or other unique or high-priority wetland habitat types, in the development of criteria and guidelines for wetland restoration objectives, management considerations, or other technical matters.

(2) In the case of a specialized subcommittee, public notification and participation are not necessary. However, final recommendations resulting from these subcommittee sessions may only be made in a general session of the STC where the public is notified and invited to attend.

(3) Representatives of any individual or entity with an interest in a particular project who serves on the STC may not assist in the development of ranking criteria or weight assignment to ranking criteria that may be applied to their project.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart C – ACEP Appeals

528.20 Appeals

A. Appeal Process

This section identifies the different programmatic relationships that NRCS has with landowners 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. The "Appeals and Mediation" policy found at 440-CPM, Part 510, and the FPAC-BC Appeals and Litigation Division customer guide, provide information on appropriate contacts within NRCS, the FPAC-BC, and the National Appeals Division (NAD).

(ii) Under ACEP-ALE, NRCS enters into ALE-agreements, and as applicable associated cost-share contracts, 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 highly erodible land conservation (HELC) and wetland conservation (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 easement 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 postclosing determinations as described in paragraph D below.

(iv) Notwithstanding paragraph (iii) above and paragraph D below, for ACEP-WRE only, subsequent to closing the easement, NRCS may enter into a conservation program contract with the landowner to implement restoration on the easement. Parties to an approved, valid conservation program contract for restoration implementation have certain appeal rights limited to the terms and conditions of the specific conservation program contract (see 440-CPM, Part 527). The conservation program contract is a separate contractual arrangement between the landowner and NRCS for the implementation of specific conservation practices or activities as prescribed and authorized by NRCS. The conservation program contract is strictly a contractual mechanism for NRCS to obtain the implementation of the restoration on the easement, and it does not afford the landowner any appeal rights with respect to the easement itself as described in paragraph B below.

(v) All appeals must be requested in writing and submitted by the appellant in accordance with 7 CFR Parts 11 and 614. The appellant is responsible to furnish facts and evidence for consideration.

(vi) All information generated as part of an appeal action must be incorporated into the official easement case file maintained at the State office and included in the agency record as needed.

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—

(i) Easement or restoration payment 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) Program ranking or screening criteria.

(vii) Published soil surveys.

(viii) Fund availability.

(ix) Mathematical- or science-based formulas and criteria.

(x) 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.

(ii) Decisions issued by the USDA Office of the General Counsel, in the exercise of authority delegated to it by the U.S. Attorney General, concerning the application of real property title standards issued by the U.S. Attorney General.

(iii) 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-agreement

(iv) 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 agreement to purchase conservation easement (APCE) or agreement to enter contract for 30-year land use (AECLU)
- NRCS decision not to extend an APCE or AECLU

(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 restore, protect, manage, maintain, monitor, 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 does 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 within 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 development or modification of wetland reserve plans of operation or 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 paragraphs B(2)(i) and (ii) above.
(ii) A determination by NRCS that a landowner has violated HELC or WC provisions under 7 CFR Part 12.

D. Postclosing Determinations

(1) Except for violations of 7 CFR Part 12 identified above, NRCS determinations that are made after easement closing and payment of easement compensation are not subject to the formal 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. The WRE landowner or ALE easement holder may be provided the opportunity to request in writing an informal review by the appropriate State conservationist. There is no further appeal available.
(3) The State conservationist will review the information necessary to ensure that the NRCS determination is in accordance with the rights acquired by the United States under the applicable easement deed and document their findings and decisions for inclusion in the administrative record should legal action become necessary.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart D – ACEP-ALE General Information and Eligibility Requirements

528.30 Overview of the Agricultural Land Easement (ALE) Component

A. Introduction

(1) The purposes of ACEP-ALE are to—
   (i) Protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; and
   (ii) Protect grazing uses and related conservation values by restoring or conserving eligible land.

(2) To achieve these purposes, NRCS is authorized to facilitate and provide cost-share assistance through ALE-agreements, as defined in subpart F, section 528.50 of this part, with eligible entities including State or local governments, Indian Tribes, and certain nongovernmental organizations for the purchase of agricultural land easements on eligible land from eligible landowners. This includes entering into ALE-agreements to provide cost-share assistance for buy-protect-sell transactions, as described in section 528.30E below.

(3) The duration of each agricultural land easement will be in perpetuity or the maximum duration allowed under State law.

(4) To participate in ACEP-ALE, entities must submit applications to NRCS and NRCS must determine the eligibility of the entity, the eligibility of each parcel of land offered for enrollment, and the payment eligibility of the landowners of each parcel of land.

(5) Once determined to be eligible to receive assistance under this part, an entity participating in ACEP-ALE is identified by NRCS as an "eligible entity." If an eligible entity is certified by NRCS under subpart H of this part, the eligible entity may also be referred to as a "certified entity." The term eligible entity refers to both a certified eligible entity or a noncertified eligible entity unless otherwise specified. A noncertified eligible entity may submit a request to NRCS to become certified (see subpart H of this part).

(6) Eligible entities with applications selected for funding must enter into an ALE-agreement with NRCS in order to receive ACEP assistance. Under the ALE-agreement, the Federal share of the cost of an agricultural land easement or other interest in eligible land 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 that is at least equivalent to the Federal share unless otherwise specified in this part.

(7) Unless otherwise specified, the term "ALE-agreement" as used in this part includes ACEP-ALE cooperative agreements, ACEP-ALE grant agreements, and ACEP-ALE program agreements, including any such agreement that may be used for a buy-protect-sell transaction. ACEP-ALE grant agreements may only be used with certified eligible entities.

B. Program Objectives

The objective of ACEP-ALE is to facilitate the purchase by eligible entities of agricultural land easements on eligible lands that protect natural resources and the agricultural nature of the land, promote agricultural viability for future generations, and permit the landowner the right to continue agricultural production and related uses subject to the terms of the easement.

C. Authority

This part contains specific policy guidance for ACEP-ALE implementation consistent with subtitle H of the Food Security Act of 1985 and 7 CFR Part 1468. Additional policy guidance for implementation of ACEP-ALE includes, but is not limited to, the following:

(i) Title 180, National Planning Procedures Handbook (NPPH), Part 600
(ii) Land Evaluation and Site Assessment (LESA) Handbook (1983 edition)
(iii) LESA Guidebook (1994 Edition)
(iv) Title 310, General Manual (GM), Part 402, "Land Evaluation & Site Assessment System"
(v) Title 180, National Food Security Act Manual (NFSAM)
(vi) Title 120, GM, Part 401, Subpart I, "NRCS National Headquarters Grants and Agreements Review and Approval Process"
(vii) Title, 190, GM, Part 410, Subpart A, "Compliance with NEPA, Procedures for NRCS-Assisted Programs"
(viii) Title 430, National Soil Survey Handbook (NSSH), Parts 600-659

D. Uses of NRCS ACEP-ALE Funds

(1) NRCS, on behalf of the Commodity Credit Corporation (CCC), may enter into an ALE-agreement with eligible entities to provide cost-share assistance for their purchase of agricultural land easements that protect agricultural lands from conversion to nonagricultural uses or to protect grazing lands and related conservation values. NRCS may enter into grant agreements with certified eligible entities because there is less-than-significant Federal Government involvement in the acquisition of agricultural land easement by certified eligible entities.
(2) NRCS may only provide ACEP-ALE funds to an eligible entity for the Federal share of the fair market value of the agricultural land easement.
(3) NRCS may use ACEP-ALE funds for its own responsibilities under the program, including technical assistance, technical review appraisals, and related costs. NRCS must not provide any ACEP-ALE funds to an eligible entity for any of the eligible entity's costs except for the Federal share of the easement acquisition cost as specified above. This prohibition includes, but is not limited to, the eligible entity costs for appraisals, areawide market analysis, legal surveys, access, title clearance or title insurance, legal fees, phase I environmental site assessments, closing services, development of agricultural land easement plans or component plans by the eligible entity, costs of easement monitoring, and other related administrative and transaction costs incurred by the eligible entity.
(4) When required, NRCS may obtain or conduct its own technical and administrative review of appraisals, areawide market analysis, or other easement valuation reports and necessary hazardous materials reviews. NRCS will obtain these reviews through an appropriate agreement or procurement method and following proper rules and procedures.
(5) NRCS may provide direct technical assistance under ACEP to develop highly erodible land (HEL) conservation plans in accordance with 7 CFR Part 12 on those portions of parcels that contain highly erodible cropland or, if requested, to assist in

compliance with the terms and conditions of agricultural land easements. Other NRCS conservation planning assistance (e.g., general NRCS conservation planning as opposed to the development of HEL conservation plans) may only be provided through conservation technical assistance if requested by the landowner and must follow standard NRCS planning procedures. For enrollments under the 2014 Farm Bill only, NRCS may continue to provide direct technical assistance under ACEP to landowners and eligible entities to develop an agricultural land easement plan or component plans.

(6) NRCS is not authorized to use ACEP funding to support agricultural lands protection strategies that do not result in the purchase of an agricultural land easement, such as agricultural use taxation programs, voluntary agricultural district programs, agricultural zoning programs, or transfer of development rights programs that do not rely on easements.

E. ACEP-ALE Transaction Types

(1) Agricultural land easements may be acquired through the following transaction types:

(i) A standard transaction, wherein NRCS enters into an ALE-agreement to provide cost-share assistance to the eligible entity for the purchase of an agricultural land easement by the eligible entity from the eligible landowner of eligible private or Tribal lands. Standard ACEP-ALE transactions involve eligible land, that at the time of application is owned by the eligible landowner and is subject to a written pending offer for the purchase of an agricultural land easement by the eligible entity.

(ii) A buy-protect-sell transaction, wherein NRCS enters into an ALE-agreement to provide cost-share assistance for the purchase of an agricultural land easement on eligible private or Tribal agricultural land that is owned or is being purchased by an eligible entity on a transitional basis for the purposes of securing the long-term protection of natural resources and the agricultural nature of the land and ensuring timely transfer of the ownership of the land to a qualified farmer or rancher subject to the additional requirements specific to buy-protect-sell transactions. There are two types of buy-protect-sell transactions:

- Preclosing Transfer.—Wherein the eligible entity will transfer fee title ownership of the land to a farmer or rancher at or prior to closing on the agricultural land easement and the eligible entity will hold the agricultural land easement prior to receiving the Federal share.
- Postclosing Transfer.—Wherein the eligible entity will transfer fee title ownership of the land to a farmer or rancher not later than 3 years after closing on the agricultural land easement, unless an extension of such time has been authorized by NRCS subject to specific requirements.

(2) At the time of application, the eligible entity must specify the transaction type that will be used to acquire the agricultural land easement on the individual parcel. All transaction types must meet the requirements of this part; buy-protect-sell transactions must also meet the additional requirements set forth in the supplemental guidance specific to buy-protect-sell transactions.

528.31 ACEP-ALE Application Process and Eligibility Overview

A. NRCS accepts ACEP-ALE applications on a continuous basis. At the discretion of the State conservationist and in coordination with any required national application cutoff dates, States may establish and advertise one or more application cutoff dates during the fiscal year. Complete applications received prior to the cutoff date will be reviewed, ranked, and

considered for funding. Complete applications received after the cutoff date may be considered in the next application period.

B. NRCS evaluates and selects parcels for funding through four primary steps, as follows:

(1) Reviewing application information and supporting documentation provided by the entity to determine entity eligibility, land eligibility, and landowner eligibility.
(2) Conducting onsite land eligibility and ranking determinations.
(3) Selecting parcels for funding based on fund availability, eligibility, ranking priority, and waiver determinations, preliminary reviews of title and access sufficiency, and evaluations of onsite or offsite conditions that would preclude or interfere with achieving program purposes.
(4) Entering into ALE-agreements with eligible entities, identifying parcels selected for funding associated with such ALE-agreements, and obligating ACEP-ALE funds for the purchase of agricultural land easements on the identified parcels.

C. Applications for Cost-Share Assistance

(1) Entities applying for cost-share assistance must submit the following:
(i) Entity application (Form NRCS-CPA-41, "Entity Application for an ALE Agreement" or successor form) and required supporting documentation.
(ii) Parcel sheet (Form NRCS-CPA-41A, "Parcel Sheet for Entity Application for an ALE Agreement" or successor form) and required supporting documentation for each parcel.
(iii) Clear evidence of the landowner's current legal ownership of the entire offered acreage, such as a recorded deed of ownership of the eligible land or a fully executed purchase agreement wherein the eligible landowner has agreed to purchase the eligible land.
(iv) Copy of the evidence of the landowner's means of physical and legal access to the easement area as described in subpart G, section 528.62B of this part.
(v) Copy of the written pending offer to acquire an agricultural land easement on the parcel identified in the application, or for buy-protect-sell transactions evidence that the land is owned by or in the process of being purchased by the eligible entity.
(vi) Application items identified in subpart E of this part.
(2) Eligible entities must identify at the time of application the estimated costs and anticipated sources that will comprise the non-Federal share for each parcel (see subpart E, section 528.43 of this part, for further details on contribution requirements).
(3) Each eligible entity that will hold an ACEP-ALE funded easement and each legal entity that will be identified as a co-holder of an ACEP-ALE funded easement must—
(i) Provide information to the Farm Service Agency (FSA) for entry into the Service Center Information Management System (SCIMS).
(ii) Provide and maintain current registration in the Dun and Bradstreet Data Universal Numbering System (DUNS).
(iii) Meet the Central Contractor Registration (CCR) requirements through the System for Award Management (SAM) or successor registry. Evidence of current active SAM registration must be checked at the time of application, at the time of obligation of funds, and at the time of each payment. Registration in SAM must be maintained for the duration of the ALE-agreement. To maintain active registration in SAM, eligible entities must renew their SAM registration annually and must not allow their registration to lapse or expire prior to renewal.

(iv) See subpart G, section 528.60A(5) of this part, for additional information on the roles and responsibilities of co-holding entities.

528.32 Entity Eligibility Requirements and Responsibilities

A. General.—To be eligible to receive ACEP-ALE funding, an entity must be one of the eligible entity types listed in paragraph B below and must provide NRCS sufficient evidence of their ability to meet the requirements and responsibilities of an eligible entity.

B. Types of Entities that are Eligible.—To be eligible, an entity must be one of the following:

(1) An agency of any State or local government or Indian Tribe (including a farmland protection board or land resource council established under State law).

(2) A nongovernmental organization that certifies that it is—

(i) Organized for and, at all times, since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986 (IRC).

(ii) An organization described in section 501(c)(3) of the IRC that is exempt from taxation under section 501(a) of the IRC.

(iii) Described in section 509(a)(1) or (2) of the IRC is described in section 509(a)(3) of the IRC and is controlled by an organization described in section 509(a)(2) of the IRC.

- The clauses under section 170 of the IRC address the following:
  - The preservation of land areas for outdoor recreation by, or the education of, the general public.
  - The protection of a relatively natural habitat of fish, wildlife, plants, or similar ecosystems.
  - The preservation of open space (including farmland and forest land) where such preservation is—
    -- For the scenic enjoyment of the general public.
    -- Pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit.
  - The preservation of a historically important land area or a certified historic structure.
- Section 501(c)(3) of the IRC addresses corporations and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
- Sections 509(a) (1), (2), and (3) of the IRC include churches, educational organization, and medical organizations.

(3) A Tribal entity is a federally recognized ''Indian Tribe'' as defined by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. Section 450b(e)), i.e., "federally recognized Tribes." The Bureau of Indian Affairs (BIA) publishes annually in the Federal Register a list of Indian Tribes that are identified as federally recognized Indian Tribes. Indian Tribes that are not federally recognized may qualify under nongovernmental organization status described above.

C. Entity Eligibility Requirements

(1) To participate in the ACEP-ALE, the entity applying for such participation must be determined by NRCS to meet the eligible entity requirements. Therefore, entities must provide as part of the application process, sufficient documentation for the State conservationist to make a determination that the entity has—

(i) Authority to purchase and hold agricultural conservation easements.

(ii) An established agricultural land protection program that purchases conservation easements for the purpose of protecting either of the following:

- The agriculture use and future viability and related conservation values of eligible land by limiting nonagricultural uses of that land; or
- Grazing uses and related conservation values by restoring or conserving eligible land.

(iii) Demonstrated a commitment to the long-term conservation of agricultural lands.

(iv) The authority and capability to acquire, manage, and enforce agricultural land easements or their equivalent.

(v) Staff capacity (either directly or through formal agreement with other entities) dedicated to monitoring and easement stewardship.

(vi) The ability to satisfy the non-Federal share requirements for each parcel proposed for funding (see subpart E, section 528.43 of this part, for specific requirements).

(vii) The ability to meet the requirements of the program.

(2) Entities with existing ACEP-ALE or Farm and Ranch Lands Protection Program (FRPP) agreements or easements that are delinquent or deficient in satisfying the terms of those agreements or easements may be determined ineligible for funding under ACEP-ALE until such time as the deficiencies are addressed. These deficiencies may include, but are not limited to—

(i) Failing to conduct monitoring or provide annual monitoring reports to NRCS or providing annual monitoring reports that are insufficient or late.

(ii) Existing ACEP-ALE agreements with funds remaining more than 2 years after the attachment execution date without any expenditures or actions towards closings of easements in the third year.

(iii) Failing to comply with the terms of the ALE or FRPP agreement.

D. Eligible Entity Responsibilities

(1) The eligible entity must—

(i) Perform necessary legal and administrative actions to ensure proper acquisition and recordation of valid agricultural land easements, including such additional actions as required for agricultural land easements acquired through an authorized buy-protect-sell transaction.

(ii) Procure and pay all costs related to determinations of value, due diligence, and closing.

(iii) Hold title to the agricultural land easements.

(iv) Meet the requirements of the ALE-agreement and carry out all responsibilities specified in the ALE-agreement, including submitting all required documentation and requests for reimbursements, advances, or extensions by required deadlines.
(v) Ensure that any required or agreed-to agricultural land easement plans are complete at or prior to closing and updated as necessary pursuant to applicable easement deed terms (see subpart G, section 528.63 of this part, for specific requirements).
(vi) Provide information to the FSA for entry into SCIMS.
(vii) Ensure DUNS and SAM registration is maintained for each eligible entity and any co-holding entities.
(viii) Ensure any legal entities that will be identified in the conservation easement deed as a co-holder (grantee) or as a third-party right holder (not a grantee) meet the requirements applicable to such legal entities as set-forth in the terms of the ALE-agreement and described in subpart G, section 528.60A(5) of this part.
(ix) Conduct monitoring at least annually and provide the monitoring report to the State conservationist at least annually.
(x) Enforce the terms of the agricultural land easement.
(xi) After consultation with and approval by NRCS, an eligible entity may assign another entity to manage and enforce the agricultural land easement. The entity assigned the management and enforcement responsibilities must have the appropriate expertise and capacity to carry out such responsibilities.

528.33 Land Eligibility

A. Land Eligibility Overview.—An onsite review by NRCS is required prior to the NRCS making a land eligibility determination. To be eligible for ACEP-ALE, land must meet each of the following criteria:

(1) Private or Tribal land that is agricultural land, including land on a farm or ranch.
(2) Subject to a written pending offer for purchase of an agricultural land easement by an eligible entity, or for buy-protect-sell transactions evidence that the land is owned by or in the process of being purchased by the eligible entity.
(3) Land that meets at least one of the following criteria:
(i) Has prime, unique, or other productive soil;
(ii) Contains historical or archaeological resources;
(iii) Enrolling the land would protect grazing uses and related conservation values by restoring or conserving eligible land; or
(iv) Protecting the land will further a State or local policy consistent with the purposes of ACEP.
(4) Land that is at least one of the following:
(i) Cropland;
(ii) Rangeland;
(iii) Grassland or land that contains forbs or shrubland for which grazing is the predominant use;
(iv) Located in an area that has been historically dominated by grass land, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value;
(v) Pastureland; or
(vi) Nonindustrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development.

(5) Land that is in an area that has access to agricultural markets for its products, infrastructure appropriate for supporting agricultural production, and other support services.
(6) Agricultural land that faces development pressure from nonagricultural use or grassland that faces pressure of conversion to nongrassland uses.

B. Eligible Land Types.—As identified under paragraph A(3) above, the land must meet one of the four following land eligibility criteria:

(1) Prime, Unique, or Other Productive Soil.—To meet this land eligibility criterion, the offered parcel must contain at least 50 percent prime, unique, statewide, or locally important soil. The 50 percent may be comprised of one type or a combination of such soils.
(i) Prime, unique, statewide, or locally important soil designations are located in NRCS State or local Field Office Technical Guides or in the NRCS Web Soil Survey and are defined as follows:
- Prime Farmland.—Land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by NRCS. Soils that are prime if irrigated or prime if drained may be considered to meet this eligibility criterion if they are currently in the condition required to be prime and the management and maintenance of the necessary irrigation or drainage rights and capabilities are addressed in the conservation easement deed, baseline documentation report, and as applicable, the agricultural land easement plan.
- Unique Farmland.—Land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by NRCS. It has a special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed in accordance with acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR Parts 657 and 658.
- Farm or Ranch Land of State and Local Importance.—Land in addition to prime or unique farmland, that is of statewide or local importance for the production of food, feed, fiber, forage, biofuels, or oilseed crops. The appropriate State or local government agency determines statewide or locally important farmland with concurrence from the State conservationist. Generally, these farmlands are nearly prime farmland that economically produce high yields of crops when treated and managed in accordance with acceptable farming methods. Some may produce as high a yield as prime farmland. In some States and localities, farmlands of statewide and local importance may include tracts of land that have been designated for agriculture by State law or local ordinance in accordance with 7 CFR Part 657.
- For the purposes of ACEP-ALE, the term “other productive soil” includes prime farmland soils, unique farmland, or farm and ranch land of State and local importance as described above.

(ii) The State conservationist, with the advice of the State technical committee, may elect to increase or decrease the required percentage (50) of prime, unique,

Statewide, or locally important farmland soil for a specific area or region of the State. The State conservationist must document in a general memorandum the area or region affected, the acceptable percentage, and the basis of the increase or reduction. A copy of the general memorandum must be kept in the easement case file for each parcel determined eligible based on this criterion. The detailed explanation should document—

- The scarcity or abundance of prime, unique, and Statewide or locally important farmland soil in the area in which the minimum 50 percent requirement is modified.
- The conservation values of the parcels that warrant protection by an agricultural land easement despite this scarcity or abundance, which may include the—
  - Agricultural viability of the farm or ranch due to size and access to markets and support infrastructure.
  - Contributions of the farm or ranch to the agricultural industry.
  - Conservation of natural resources contributing to agricultural viability in the area.
- How the restrictions in the conservation easement deed will preserve the documented conservation values.

(iii) The determination of whether the land contains prime, unique, Statewide or locally important soils is based on the NRCS designations made using the criteria and procedures in the most current version of 430-NSSH. Third-party submissions of soil designations are not acceptable under ACEP-ALE, unless the designation has been verified, updated, and incorporated into the official soil survey data in accordance with the most current 430-NSSH procedures.

(2) Historical or Archaeological Resources

(i) To meet this land eligibility criterion, parcels containing historical or archaeological resources may be eligible for ACEP-ALE, the historical or archaeological sites must be on a farm or ranch to be enrolled and be—

- Listed in the National Register of Historic Places (established under the National Historic Preservation Act (54 U.S.C. Section 302101 et seq.)), including traditional cultural properties as defined in National Register Bulletin 38.
- Formally determined eligible for listing in the National Register of Historic Places (by the State historic preservation officer (SHPO), Tribal historic preservation officer (THPO), or the Keeper of the National Register.
- Formally listed in a State or Tribal register of historic places.
- Included in the SHPO or THPO's inventory with written justification as to why it is eligible for the National Register of Historic Places.

(ii) For parcels determined eligible based on containing historical and archaeological resources, the following requirements must also be met:

- The agricultural land easement deed must address the protection of the historical or archaeological resources as required by Secretary of the Interior's "Standards for the Treatment of Historic Properties."
- The deed must identify at least one grantee or a third party with designated monitoring responsibilities that has experience in managing, monitoring, and enforcing historical or archaeological resources.

(3) Protection of Grazing Uses and Related Conservation Values.—To meet this land eligibility criterion, the enrollment of such land must result in the protection of

grazing uses and related conservation values by restoring or conserving eligible land. Such land must be one of the following:

(i) Grassland, rangeland, pastureland, land that contains forbs, or shrubland for which grazing is the predominant use.

(ii) Located in an area historically dominated by grassland, forbs, or shrubland, and the State conservationist, with advice from the State technical committee, determines to be compatible with grazing uses and related conservation values, and the grassland, forb, or shrubland vegetative communities historically found on the site have been restored or the eligible entity has a valid, funded plan for the restoration of such vegetative communities in place prior to closing, and either of the following apply to the enrollment of such land:

- Could or does provide habitat for animal or plant populations of significant ecological value if the land is retained in grazing uses and related conservation values
- Would address State, regional, or national conservation priorities

Note: Technical and financial assistance funding for restoration is not available under ACEP-ALE, if restoration to reestablish the historic vegetative communities is necessary, the landowner and eligible entity must secure such planning assistance and funding outside of ACEP-ALE.

(iii) Grassland of special environmental significance, which is defined in 7 CFR Section 1468.3 as grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law; are subject to the threat of conversion to nongrassland uses or fragmentation; and the land is—

- Rangeland, pastureland, shrubland, or wet meadows on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or is improved, naturalized pastureland, rangeland, or wet meadows.
- And the land provides, or could provide, habitat for threatened or endangered species or at-risk species, protects sensitive or declining native prairie or grassland types or grasslands buffering wetlands, or provides protection of highly sensitive natural resources as identified by the State conservationist, in consultation with the State technical committee.

Note: The enrollment of land that meets the requirements of grasslands of special environmental significance results in the protection of related conservation values under this land eligibility criteria.

(iv) For parcels determined eligible based on protecting grazing uses and related conservation values, the agricultural land easement deed must address the protection of those grazing uses or grassland values.

(4) Land that Furthers a State or Local Policy.—To meet this land eligibility criterion, the State or local policy must be consistent with the purposes of ACEP-ALE and the protection of such land must further the State or local policy.

(i) States must document how the State or local policy is consistent with the purposes of ACEP-ALE and how preservation of the parcel is consistent with that policy. This documentation must be retained in the easement case file for each parcel.

(ii) For parcels determined eligible based this land eligibility criterion, the agricultural land easement deed must address the ACEP-ALE purposes that are being supported by a specific State or local policy.

C. Eligible Land Uses

(1) As identified under paragraph A(4) above, the land must also be in one of the following uses:
   (i) Cropland
   (ii) Rangeland
   (iii) Grassland or land that contains forbs, or shrubland for which grazing is the predominant use
   (iv) Located in an area that has been historically dominated by grass land, forbs, or shrubs and could provide habitat for animal or plant populations of significant ecological value as described in paragraph B(3)(ii) above
   (v) Pastureland
   (vi) Nonindustrial private forest land that contributes to the economic viability of an offered parcel or serves as a buffer to protect such land from development

(2) Forest Land Requirements.—Forest land is areas of native trees grown under natural conditions regardless of the products harvested (timber, nuts, berries, vines, mushrooms). Forest land is defined as land cover or use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 13 feet tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater (source: National Resources Inventory Glossary).

Note: For the purposes of ACEP-ALE land eligibility, land covered by trees is considered cropland when the trees are not native species (orange groves, fruit and nut tree orchards) or native species that are cultivated (planted in rows, fertilized, and cultivated).

   (i) To be eligible for enrollment in ACEP-ALE, the nonindustrial private forest land must contribute to the economic viability of an agricultural operation or serve as a buffer to protect an agricultural operation from development, as determined by NRCS.
      - ACEP-ALE easements may contain forest land on up to two-thirds of the ACEP-ALE easement area. The State conservationist may waive the two-thirds limitation for acreage that NRCS determines is a sugar bush operation that contributes to the economic viability of the operation.
      - NRCS may contribute funds to a portion of a larger easement where the overall forest land of the easement exceeds two-thirds of the larger easement area so long as the ACEP-ALE easement is a subcomponent of the larger easement and all of the following apply:
        - The forest land on the ACEP-ALE easement is not in excess two-thirds of the ACEP-ALE easement area.
        - The deed of easement clearly identifies the portion of the easement area that is in the ACEP-ALE easement.
        - The ACEP-ALE easement is a single contiguous land parcel, though it may be traversed by a public roadway or utility easement.
        - The fair market value of the ACEP-ALE is appraised separately from the non-ACEP-ALE easement area and a separate value provided. The value of the ACEP-ALE may be reported in the same appraisal as the non-ACEP-ALE area.
        - The Federal share of the ACEP-ALE will be based on the fair market value of the ACEP-ALE only.

- Any eligible entity or landowner contribution to the purchase price of the easement area outside of the ACEP-ALE area is not used as part of the non-Federal share for the ACEP-ALE.

(ii) For 2014 Farm Bill enrollments: if the contiguous forested acreage is the greater of 40 acres or 20 percent of the ACEP-ALE easement area, the forested acreage must have a forest management plan as a component of the agricultural land easement plan. (See subpart G, section 528.63B of this part, for additional detail.)

(3) Incidental Land.— Incidental land includes such land as farmstead areas, other areas with agricultural buildings and infrastructure, and nonforested wetlands. The acres of incidental land must not exceed the acres of otherwise eligible land. Land that is incidental to the eligible land and that is not otherwise eligible, may be included in an ACEP-ALE easement if the State conservationist determines any of the following apply to the incidental land:

(i) Is necessary for the efficient administration of an agricultural land easement.

(ii) Significantly augments the protection of the associated farm or ranch land.

(iii) Contributes to the grassland functions and values and related conservation values.

D. Additional Land Eligibility Requirements

(1) Written Pending Offer.—Eligible land must be subject to a written pending offer by an eligible entity, except as described in paragraph (2) below for a buy-protect-sell transaction.

(i) A pending offer is a written bid, contract, or option to convey a conservation easement for any of the following purposes:

- Protecting agricultural productivity by limiting conversion to nonagricultural uses
- Protecting historical or archaeological sites from destructive practices
- Protecting grazing uses and related conservation values by restoring or conserving land
- Furthering ACEP-ALE policy or policy consistent with the purposes of ACEP-ALE

(ii) The written pending offer may be extended by the eligible entity to the landowner to acquire the conservation easement or may be from the landowner to the eligible entity to sell the conservation easement. The State conservationist will determine the sufficiency of the written pending offer for the purposes of determining ACEP-ALE eligibility.

(iii) A written pending offer may take the form of a signed option-to-purchase agreement or other type of purchasing agreement, a letter of intent to sell the easement, an offer letter from the landowner to the eligible entity, or other similar documentation. A pending offer may document a landowner's intent to sell the easement without a commitment to a purchase price as many offers are made before the appraisals are completed.

(iv) Pending offers must be for a conservation easement in perpetuity or the maximum duration allowed under State law.

(v) A copy of the written pending offer must be provided by the entity at the time of application and must be retained in the easement case file for the individual parcel.

(2) Buy-Protect-Sell Transaction Land Eligibility.—Private or Tribal land that otherwise meets the eligibility requirements of this part that is owned or in the process of being

purchased by an eligible entity may be determined eligible for ACEP-ALE as part of a buy-protect-sell transaction if all of the following criteria are met.

(i) The otherwise eligible land is also subject to conditions, as determined by NRCS, that necessitate ownership of the parcel by the eligible entity on a transitional basis prior to the creation of an agricultural land easement, such as—

- Imminent threat of development or fragmentation into parcels below the median size of farms or ranches in the county or parish as determined by the USDA's most recent National Agricultural Statistical Survey (NASS);
- Planned or approved conversion of grasslands to more intensive agricultural uses; or
- Part of a documented eligible entity program to transition ownership of agricultural lands to historically underserved farmers or ranchers.

(ii) At the time of application, the eligible entity must provide NRCS evidence that the eligible entity either—

- Owns the land; or
- Is in the process of actively purchasing the land. Such evidence may include a valid purchase agreement, a statement from the existing landowner that they are unwilling or unable to sell a conservation easement themselves, or sufficient funds to complete the purchase of the land.

(iii) The eligible entity is able to meet all applicable ACEP-ALE general requirements and all specific provisions related to buy-protect-sell transactions identified in this part and supplement guidance specific to buy-protect-sell transactions.

(3) Agricultural Land.—Real property is considered to be agricultural land or land in agricultural use, including land on a farm or ranch, if it is consistent with the State's program to purchase agricultural conservation easements. If there is no State program, the definitions of a farm, ranch, or agricultural use in the State's agricultural use tax assessment program will be used to define agricultural land.

(i) The NRCS State conservationist must be familiar with the State's definition of agricultural use. If the State conservationist determines the State's definition of agriculture to be so broad that an included use could lead to the degradation of soils a farm or ranch whose use degrades the soil may be determined ineligible for ACEP-ALE. Agricultural land easement deeds will restrict the permitted agricultural uses to those that will not degrade the soils.

(ii) ACEP-ALE funds will not be used to purchase an easement on lands that are in an agricultural use prohibited by Federal law, even if such use is authorized under State law. The agricultural land easement deeds must include a provision that requires agricultural uses to be in compliance with all applicable laws, including Federal laws prohibiting the production of controlled substances.

(4) Tribal Lands.—For the purposes of ACEP-ALE, Tribal lands are eligible under certain conditions and are those defined in 7 CFR Section 1468.3 as "acreage owned by Indian Tribes," which means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a native corporation, Tribe, or the BIA. The various interests that American Indian and Alaskan Native Tribes may hold in real property represent a unique form of property right in the American legal system. Interests in real property have been acquired by American Indian and Alaskan Native Tribes through various means, such as by aboriginal title, treaty, act of Congress, or Executive action.

(i) Indian Tribes may apply for ACEP-ALE as an eligible entity or as a landowner.

- When the Tribe is a landowner in an eligible entity's application, the eligible entity must be independent of the Tribe and with no apparent conflicts of interest holding and managing the ACEP-ALE easement.
- When the Tribe applies as an eligible entity it may not be a landowner of the lands to be protected, unless the application is for a buy-protect-sell transaction.

(ii) Because of these various forms of real property interest, statutory restraints against alienation often exist. When the land offered for enrollment is held in trust by the BIA, the landowner will contact the BIA to determine whether the Tribe must receive any necessary clearances from the BIA to be considered eligible. Those contracts and clearances must accompany the application for ACEP-ALE. Tribal trust land may not be listed as a funded parcel on an ALE-agreement without the prior approval of the BIA.

528.34 Ineligible Lands

A. General.—The following lands are not eligible for cost-share assistance under ACEP-ALE. See detailed descriptions in paragraph B below for additional information on each ineligible land type.

(1) Lands owned by an agency of the United States, other than land held in trust for Indian Tribes.
(2) Lands owned in fee title by a State, including an agency or a subdivision of a State, or unit of local government.
(3) Land owned by a nongovernmental organization whose purpose is to protect agricultural use and related conservation values, unless the land is owned on a transitional basis as part of buy-protect-sell transaction.
(4) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection as would be provided by enrollment in the ACEP-ALE.
(5) Land where the purposes of the program would be undermined due to onsite or offsite conditions, such as risk of hazardous materials, permitted or existing rights-of-way, infrastructure development, or adjacent land uses.
(6) Land that NRCS determines to have unacceptable exceptions to clear title or insufficient legal access.
(7) Land on which gas, oil, earth, or mineral rights exploration has been leased or is owned by someone other than the landowner unless NRCS determines that the third-party rights will not harm or interfere with achieving the ACEP-ALE purposes.

B. Ineligible Lands – Detailed Descriptions

(1) Lands Owned by the Federal Government.—Lands owned by an agency of the United States, other than land held in trust for Indian Tribes, are ineligible for ACEP-ALE, this includes that such lands are ineligible for a buy-protect-sell transaction except those held in trust for Indian Tribes.
(2) Lands Owned by a State or Local Government.—Lands owned in fee title by a State, including an agency or a subdivision of a State, or a unit of local government are ineligible for ACEP-ALE, this includes that such lands are ineligible for a buy-protect-sell transaction.
(3) Lands Owned by a Nongovernment Organization.—Lands owned by a nongovernmental organization whose purpose is to protect agricultural uses and

related conservation values are ineligible for ACEP-ALE, except as part of an approved buy-protect-sell transaction.

(4) Land Subject to a Similar Easement or Deed Restriction.—Land that is already subject to an easement or other deed restriction that prevents its conversion to nonagricultural or nongrassland use is not eligible. These protections may include, but are not limited to—

(i) Enrollment in other USDA easement or set-aside programs, such as ACEP-Wetland Reserve Easement (WRE), the Wetlands Reserve Program (WRP), Grasslands Reserve Program (GRP), Healthy Forest Reserve Program (HFRP), and Conservation Reserve Enhancement Program (CREP) easements, Emergency Watershed Protection Program – Floodplain Easements (EWPP-FPE).

(ii) Lands owned by an eligible entity except as part of an approved buy-protect-sell transaction on private or Tribal lands.

(iii) Acreage already preserved by a transfer of development rights may not be enrolled under ACEP-ALE or used to meet any of the land eligibility requirements (e.g., 50 percent prime soils requirement). Where land is preserved through the sale of transfer of development rights, the acreage in question will not be counted as part of a landowner or eligible entity's contribution to the non-Federal share.

(5) Adverse Onsite or Offsite Conditions.—Offsite or onsite conditions that could undermine, preclude, or interfere with achieving the purposes of the program, as determined by NRCS, render the site ineligible for ACEP-ALE. These adverse conditions may include, but are not limited to—

(i) The presence or potential presence of hazardous materials issues on the parcel or a neighboring site. NRCS will not enroll or provide ACEP-ALE cost-share assistance on a parcel where NRCS determines that hazardous materials issues pose an unacceptable risk, may preclude or delay the easement acquisition, or otherwise undermine the ability to achieve program purposes.

- NRCS conducts the limited phase-I environmental site assessment (limited phase-I) to identify whether the parcel has any such hazardous materials issues. The limited phase-I includes at a minimum, an environmental record search, current landowner interviews, and an onsite visit to view present conditions (see subpart U of this part, for the "Hazardous Materials Field Inspection Checklist" and the "Hazardous Materials Landowner Interview") and is to be completed as follows:
  - Prior to enrollment, NRCS will conduct an onsite visit of the offered parcel to initially complete the hazardous materials field inspection checklist.
  - Prior to enrollment, the landowner interview must be completed either through an in-person or over-the-phone interview with NRCS and the interviewee or may be remotely completed by the interviewee with follow-up as needed by NRCS. The interviewees must include the current landowner and as needed, others knowledgeable about the property including occupants, operators, or previous owners.
  - NRCS will procure and review the environmental record search within 180 days of identifying a parcel as selected for funding under an ALE-agreement.
  - At any time prior to closing, NRCS may conduct additional onsite visits or landowner interviews as needed to follow-up on new information or conditions, changes to the proposed easement area, or other circumstances that warrant further review of hazardous materials issues.

- If the limited phase-I identifies the need for further investigation of any hazardous materials issues associated with the offered parcel, the State conservationist will determine if further investigation should be conducted or whether sufficient information exists to determine the parcel ineligible. Further investigation conducted by or paid for by NRCS is limited to a full phase-I environmental site assessment (full phase-I) that meets the requirements of 40 CFR Part 312.
- The eligible entity may obtain a full phase-I conducted by a qualified environmental professional and provide it to NRCS to satisfy the requirement for NRCS to conduct a limited phase-I. NRCS must still conduct an onsite visit to complete other required onsite eligibility, ranking, and due diligence activities including Landowner Disclosure Worksheet and to confirm the accuracy of information provided in the application to the extent that information is observable onsite as outlined in subpart E, section 528.40A(7) of this part, but NRCS is not required to complete its own separate limited phase-I.
- If NRCS determines based on a limited phase-I or full phase-I that there are hazardous materials on or affecting the offered parcel or that a phase-II environmental site assessment is needed, the parcel is ineligible and will be removed from consideration for ACEP-ALE funding or from the ALE-agreement. NRCS will not reconsider the parcel unless and until the State conservationist in consultation with the Office of General Counsel (OGC) determines that the eligible entity or landowner has provided sufficient documentation that all necessary assessments have been completed and that the site has been fully remediated.

(ii) Permitted or existing rights of way, either onsite or offsite, such as transmission lines, highways, pipelines or other existing or proposed infrastructure that introduce disturbances or risks that undermine the purposes of the easement.

- For example, transmission lines or roads fragmenting parcels offered for enrollment under grassland or grassland of special environmental significance for protection of sage grouse or other at-risk species.
- Permitted rights of way may include documented routes approved by a government authority. Because NRCS will not knowingly interfere with the infrastructure project objectives of another agency, the land may be determined ineligible or may require reconfiguration in order to become eligible.
- If an infrastructure project is not definitive as to its location and scope (e.g., if there is still more than one possible or proposed route at the time of obligation), then NRCS may not determine a parcel ineligible simply because an infrastructure project is under consideration in an area.

(iii) Adjacent land uses that could impede or undermine the continued agricultural viability of the parcel, such as the close proximity of the site to an area with existing, planned, or zoned land uses of development or recreational use that will be negatively impacted or incompatible with ongoing agricultural operations or cultural practices, such as agricultural waste or pesticide application.

(6) Unacceptable Title or Access Issues.—Because NRCS must be able to determine that ACEP-ALE funds will result in long-term agricultural protection, land that NRCS determines to have unacceptable exceptions to clear title or insufficient legal access for ACEP-ALE purposes is ineligible. NRCS, at its sole discretion, may deny funding for any parcel with unacceptable exceptions to clear title or insufficient legal

access. Such issues may include, but are not limited to, existing easements, rights of way, leases, or other encumbrances owned or leased by a third party that—

(i) Have a high likelihood of resulting in conversion to a nonagricultural or nongrassland use.

(ii) Allow a scope or intensity of use that could interfere with the agricultural use and agricultural viability of the property.

(iii) May limit the easement holder's ability to monitor or enforce the easement.

(iv) Include mortgages or liens that cannot be removed or subordinated as required.

(7) Mineral Exploration.—Land on which gas, oil, earth, hard rock, stone, gravel, geothermal, or mineral rights exploration has been leased or is owned by someone other than the landowner is ineligible under ACEP-ALE unless it is determined by NRCS that all of the following criteria are met:

(i) The third-party rights will not harm or interfere with the conservation values or agricultural uses of the easement.

(ii) Any methods of exploration and extraction will have only a limited and localized impact on the easement.

(iii) The landowner's discretion with respect to third-party rights is limited as specified in the ALE deed pursuant to the requirements in 7 CFR Section 1468.25 and subpart G, section 528.60I of this part.

Note: NRCS may use remoteness tests, mineral assessments, or the mineral matrix for NRCS easements, or other materials for the evaluation of such third-party rights. NRCS may also review similar documents provided by the eligible entity or landowner to determine the likelihood of surface disturbance that would undermine the agricultural viability of the enrolled parcel or parcels. The ALE standard minimum deed terms contain language that addresses the landowner discretion with respect to such third-party rights.

528.35 Payment Eligibility Criteria Applied to Landowners as Beneficiary

A. General

(1) All landowners, as listed on the current property deed or equivalent evidence of ownership documentation or as required based on the specific arrangement of an approved buy-protect-sell transaction, must be established in the SCIMS or successor systems (i.e., FSA Business Partner database) and have the following documents completed, reviewed, and filed at the USDA service center:

(i) A copy of the current property deed or other current evidence of ownership (hereafter ownership documentation), including a breakdown of ownership shares if applicable;

(ii) Form AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification" for all landowners listed on the ownership documentation, including required members of legal entities;

(iii) Form CCC-941, "Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information," and related forms, or equivalent successor forms as applicable, for all landowners listed on the ownership documentation, including required members of legal entities; and

(iv) When the landowner is a legal entity:

- Form CCC-901, "Member's Information," or Form CCC-902, "Farm Operating Plan," or equivalent successor forms as applicable, and

- Proof that the legal entity is a legal and valid entity in the State where the land is located, usually by a certificate of good standing from the secretary of the State.

(2) Eligibility must be determined for all landowners of record, as listed on the ownership documentation, including all individuals, legal entities, and entity members down to the individuals as required based on the "ACEP Landowner Eligibility Matrix" (see subpart U of this part for the ACEP landowner eligibility matrix). FSA is responsible for making payment eligibility determinations based on compliance with AGI provisions pursuant to 7 CFR Part 1400 and FSA policy and procedures (see FSA Handbook 5-PL) and compliance with HEL/WC provisions pursuant to 7 CFR Part 12 and FSA policy and procedures (see FSA Handbook 6-CM).

(3) In accordance with FSA policy and procedures (see FSA Handbooks 1-CM and 11-CM), FSA will work with customers to gather any additional information needed to complete the records in the FSA systems (e.g., SCIMS, Business Partner, or successor systems). Using the information listed above, FSA will establish the specific business type for each landowner.

For land held by a trust that files using the same Social Security number as an individual, the landowner and FSA must ensure that the landowner as identified on the current evidence of ownership document is in SCIMS, or successor system, and has proper documentation of landowner eligibility.

(4) Based on the ACEP-ALE transaction type, the payment eligibility criteria must be met as follows:

(i) For standard ACEP-ALE transactions: All landowners of record must meet all landowner eligibility requirements in the fiscal year the parcel is identified as selected for funding on an attachment to the ALE-agreement and as specified below in paragraphs B and C of this section. If the land is sold or transferred prior to the easement closing, or if the composition of a landowner-legal entity changes prior to the easement closing, the landowner payment eligibility must be determined as described in subpart F, section 528.51D of this part.

(ii) For preclosing transfer buy-protect-sell transactions as described above in section 528.30E: All landowners of record to whom the fee title of the property will be conveyed by the eligible entity prior to closing on the agricultural land easement, must be eligible in the fiscal year the fee title is conveyed and as specified below in paragraphs B and C of this section. The eligible entity must provide NRCS a copy of the ownership documentation within 30 calendar days of transfer of fee title ownership. Eligible entities should encourage prospective landowners to submit the documentation needed to establish records with USDA well in advance of transferring fee title.

(iii) For postclosing transfer buy-protect-sell transactions as described above in section 528.30E: the person or legal entity that is or will be the landowner of record at the time the agricultural land easement closes must meet the landowner eligibility requirements in the fiscal year the ALE-agreement for the buy-protect-sell transaction is executed by all parties and as specified below in paragraphs B and C of this section. If the land is sold or transferred prior to easement closing, the payment eligibility must be determined as described in subpart F, section 528.51D of this part, or in accordance with the specific terms of the ALE-agreement for the buy-protect-sell transaction.

B. Adjusted Gross Income

(1) All landowners, including required members of landowner-legal entities, must meet the adjusted gross income (AGI) limitations as set forth in 7 CFR Part 1400 and must file with FSA all documents required by FSA to meet AGI filing requirements. All landowners, including required members of landowner-legal entities, must file with FSA the AGI certification, Form CCC-941, "Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information," or successor form, in accordance with FSA requirements. Landowners that are a legal entity or general partnership must also provide to FSA member information and percentage of ownership documentation (e.g., CCC-901, CCC-902, or successor forms), in accordance with FSA requirements. FSA is responsible for completing determinations on all AGI certifications.

Note: Indian Tribes are not subject to AGI provisions.

(2) The fiscal year for which the landowners must be AGI eligible and the timing of the determination is based on the transaction type as identified in paragraph A(4) above and as described in this paragraph B. A determination of AGI eligibility must be:
   (i) Made for the fiscal year the parcel is identified as selected for funding on an attachment to the ALE-agreement for standard ACEP-ALE enrollments and postclosing transfer buy-protect-sell transactions and prior to the execution of enrollment agreements or contracts by NRCS.
   (ii) Made for the fiscal year the fee title is conveyed from the eligible entity to the landowner (qualified farmer or rancher) and prior to payment by NRCS for preclosing transfer buy-protect-sell transactions.
   (iii) Updated as specified in this paragraph and in subpart F, section 528.51D of this part, for any change in ownership, change in legal entity membership or configuration, or other triggering event that occurs prior to closing.

(3) NRCS must confirm with FSA that all landowners of record, including members of landowner-legal entities, are eligible for payment under the AGI provisions. In accordance with 7 CFR Part 1400, eligibility for payment based on the AGI provisions is applicable as follows—
   (i) AGI-eligible and no commensurate reduction of payment will apply if either:
      - FSA has determined that all landowners as listed on the most current ownership documentation, whether a person, a legal entity, or general partnership, including all required members of a landowner-legal entity or general partnership, do not exceed the AGI limitation; or
      - FSA has determined that a landowner exceeds the AGI limitation or a landowner-legal entity is subject to a commensurate reduction in payment due to entity members that FSA has determined do not meet the AGI provisions, and the affected landowners have requested and received a waiver of the AGI limitation from NRCS.
   (ii) AGI-eligible but a commensurate reduction of the payment of the ACEP-ALE Federal share provided to the eligible entity will apply if FSA has determined all landowners as listed on the most current ownership documentation do not exceed the AGI limitation, but such landowners that are legal entities or general partnerships include members that FSA has determined to be AGI-ineligible, including those landowner-legal entities that request and are not granted a waiver of the AGI limitation by NRCS. In such cases, payment of the Federal share must be reduced by an amount commensurate to the percent ownership in the landowner-legal entity or general partnership held by AGI-ineligible entity members.

(iii) Ineligible and cancelled, if any landowner, as listed on the current ownership documentation, is ineligible based on the AGI provisions, including—

- Landowners that do not file the paperwork required to complete such determinations.
- Landowners that FSA has determined exceed the AGI limitation, including those that have requested and are not granted a waiver of the AGI limitation by NRCS.
- Landowner-legal entities or general partnerships with members that do not meet the AGI provisions and are unwilling to accept a commensurately reduced Federal share, including those that have requested and are not granted a waiver of the AGI limitation by NRCS.

(4) Any required commensurate reduction in the Federal share for AGI-ineligible members of an otherwise AGI-eligible landowner-legal entity should be discussed with the landowners before continuing to process the application or ALE-agreement to determine if the landowners will elect to proceed with a commensurate reduction applied, will withdraw their application, or for 2018 Farm Bill enrollments only, will request a waiver of the AGI limitation. For landowners that elect to proceed with a commensurate reduction applied, an AGI waiver may not be granted after the enrollment agreement or contract has been executed by NRCS. NRCS must identify on the obligating document the full amount of the Federal share prior to the commensurate reduction and whether a commensurate reduction must be applied to the Federal share provided by NRCS. NRCS will coordinate with the financial management staff to ensure that the full amount of the Federal share is obligated and necessary commensurate reductions to the Federal share occur at the time of payment. (See subpart U of this part for the ALE-agreement attachment.)

(5) AGI Waiver.—2018 Farm Bill enrollments only: landowners may request a waiver of the AGI limitation from NRCS if FSA has determined a landowner exceeds the AGI limitation or if a landowner-legal entity is subject to a commensurate reduction in USDA payments due to entity members who do not meet the AGI limitation provisions. The AGI limitation may be waived for such landowners on a case-by-case basis for enrollments that will result in the protection of environmentally sensitive land of special significance in accordance with 7 CFR Part 1400. The request must be submitted in writing by the affected landowner to the appropriate State conservationist. This includes, that for AGI-eligible landowner-legal entities that are subject to a commensurate reduction due to AGI-ineligible entity members, the written AGI waiver request must be submitted by the landowner-legal entity, the individual AGI-ineligible members of such entity do not have to submit a written request for a waiver of the AGI provisions. NRCS may bundle the written AGI waiver requests received from each affected landowner of record associated with a single application for enrollment (parcel). Following the receipt of the written landowner requests, NRCS will review, process, track, and report AGI waiver requests and determinations in accordance with the requirements set forth in the supplemental guidance specific to AGI waiver procedures.

(6) The AGI eligibility determinations completed by FSA and the subsequent issuance of any AGI waivers by NRCS, must occur prior to NRCS execution of enrollment agreements or contracts for standard ACEP-ALE enrollments or postclosing transfer buy-protect-sell transactions, prior to issuing payment for preclosing transfer buy-protect-sell transactions, or prior to NRCS execution of any documents required for landowner changes that occur after enrollment and prior to easement acquisition (see subpart F, section 528.51D of this part). The AGI determinations, including any AGI waiver determinations, used for the purposes of enrollment remain in effect for the

duration of the enrollment unless there is a change in land ownership, the enrolled area, or the treatment of the land under the agreement or contract that would affect the AGI determination, including the applicability of an approved AGI waiver. Furthermore, NRCS may not approve waivers of the AGI limitation after the enrollment agreement or contract has been executed by NRCS except for preclosing transfer buy-protect-sell transactions or changes in land ownership as described in subpart F, section 528.51(D), or for changes to the enrolled area or approved land treatment that are within the scope of the existing agreement or contract and warrant consideration.

Note: AGI waivers are not available for parcels enrolled under ACEP-ALE agreements originally executed under the 2014 Farm Bill.

(7) The AGI eligibility determination for all landowners of record, including documentation related to AGI waivers or commensurate reductions, must be documented in the easement business tool (e.g., NEST) and the individual easement case file.

C. Conservation Compliance

(1) NRCS must confirm based on documentation from FSA that all landowners of record (persons and legal entities) have filed Form AD-1026, and are compliant with the HEL/WC provisions of the Food Security Act of 1985.

(2) Through operation of "affiliated persons" under 7 CFR Section 12.8, all landowners of record are required to be in compliance with both the HEL and WC provisions for the application to be considered eligible for enrollment and payment. If any landowner listed on the deed is ineligible, the parcel is ineligible.

(3) If the landowner is a legal entity, the legal entity must be HEL and WC compliant, and required members of the legal entity must also be in compliance (see subpart U of this part for the ACEP landowner eligibility matrix). If any member of a legal entity that requires member eligibility is not in compliance with the HEL and WC provisions, the parcel is ineligible.

(4) The fiscal year for which the landowners must be HEL/WC eligible and the timing of the determination is based on the transaction type as identified in paragraph A(4) above and as described in this paragraph C. A determination of HEL and WC eligibility must be—

(i) For standard ACEP-ALE enrollments and postclosing transfer buy-protect-sell transactions, be made for the fiscal year the parcel is identified as selected for funding on an attachment to the ALE-agreement and prior to the execution of such enrollment agreements or contracts and again prior to payment of the Federal share for the fiscal year in which payment will be issued.

(ii) For preclosing transfer buy-protect-sell transactions, be made for the fiscal year the fee title is conveyed from the eligible entity to the landowner (qualified farmer or rancher) and again prior to payment of the Federal share for the fiscal year in which payment will be issued.

(iii) Updated as specified in this paragraph C and in subpart F, 528.51D of this part for any change in ownership, change in legal entity membership or configuration, or other triggering event that occurs prior to closing.

(5) If a landowner regains compliance with the HEL and WC provisions, a new application may be submitted.

528.36 Participation in Other USDA Programs

Land enrolled in ACEP-ALE may be enrolled in other USDA conservation programs provided the eligibility requirements of the other programs are met, including the following:

(1) Agricultural Management Assistance Program (AMA).
(2) Regional Conservation Partnership Program (RCPP), except RCPP easements that would address the same objectives and purposes as ACEP-ALE.
(3) Conservation Reserve Program (CRP) rental contracts.
(4) Conservation Reserve Enhancement Program (CREP) long-term contracts or other noneasement enrollment types.
(5) Conservation Stewardship Program (CSP).
(6) Environmental Quality Incentives Program (EQIP).
(7) The ACEP-WRE component, the Emergency Watershed Program – Floodplain Easement Program (EWP-FPE), or the Healthy Forest Reserve Program (HFRP) provided any necessary subordinations or releases are obtained pursuant to the applicable authorities and procedures for easement administration actions and the easement valuation accounts for existing deed or land use restrictions.

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 maybe 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 the 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

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

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.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart F – ACEP-ALE Cooperative Agreements and Grant Agreements

528.50 Overview of ACEP-ALE Agreements

A. Background

(1) NRCS may use the following agreement types to implement ACEP-ALE:
(i) An ACEP-ALE cooperative agreement with any type of eligible entity
(ii) An ACEP-ALE grant agreement with certified eligible entities only
(iii) An ACEP-ALE program agreement with any type of eligible entity and as authorized by the Deputy Chief for Programs

(2) The above-listed agreement types are hereinafter referred to as an "ALE-agreement" and guidance referring to ALE-agreements applies to all ALE-agreement types, unless otherwise specified. NRCS, on behalf of the Commodity Credit Corporation (CCC), enters into an ALE-agreement for eligible entities to acquire agricultural land easements on eligible parcels selected for funding.

(3) The ALE-agreement is the principal program document used to establish how NRCS and an eligible entity will coordinate the activities needed for the eligible entity to purchase an agricultural land easement with ACEP-ALE cost-share assistance. The ALE-agreement identifies each party's respective rights, requirements, roles, and responsibilities, and addresses the provision of Federal ACEP-ALE cost-share assistance as follows:
(i) ACEP-ALE cooperative and grant agreements are the legal agreements with which the Federal Government establishes a financial assistance relationship with an eligible entity, including the obligation and payment of ACEP-ALE cost-share assistance.
(ii) ACEP-ALE program agreements establish the framework under which NRCS and an eligible entity will operate and identifies the potential co-holder and third-party right holders that may be party to the acquisition of any ACEP-ALE easement associated with the ACEP-ALE program agreement. ACEP-ALE funds are not obligated to an ACEP-ALE program agreement, instead the obligation and payment of cost-share assistance occurs on an individual parcel basis through execution of individual ACEP-ALE cost-share contracts that are associated with the ACEP-ALE program agreement and are entered into by NRCS, the eligible entity, and any co-holders specific to the individual parcel.

B. ACEP-ALE Cooperative Agreements

(1) Each fiscal year, NRCS National Headquarters (NHQ) publishes the standard ACEP-ALE cooperative agreement template for use in that fiscal year. For all new cooperative agreements entered into in a given fiscal year, the State conservationist will use cooperative agreement template published for that fiscal year.

(2) Any eligible entity type, irrespective of their certification status, may elect to enter into a standard ACEP-ALE cooperative agreement, and agrees through its execution of the ACEP-ALE cooperative agreement to comply with the standard terms and conditions of such agreement.

(3) If a certified eligible entity elects to enter into an ACEP-ALE cooperative agreement rather than an ACEP-ALE grant agreement, the certified eligible entity may not request changes to the cooperative agreement to incorporate terms and conditions

otherwise available under an ACEP-ALE grant agreement. The certified entity is subject to the standard submission and review requirements pursuant to the terms and conditions of the standard ACEP-ALE cooperative agreement.

Note: The Easement Programs Division (EPD) will maintain a national list of certified and decertified entities that each State office must check prior to entering into an ALE-agreement.

(4) The EPD director may approve limited changes to the terms of an ACEP-ALE cooperative agreement template, as follows:
   (i) The eligible entity may submit a request for a revision to the cooperative agreement template to the State conservationist for revisions that may facilitate an eligible entity's need to meet non-NRCS requirements to which the eligible entity may be subject. For example, if the eligible entity is a State and Tribal Government, and local government with statutory authorities that conflict with specific terms of the cooperative agreement template.
   (ii) If the State conservationist supports the requested revision they will forward the proposed amended cooperative agreement to the EPD director with a copy to the FPAC-BC Grants and Agreements Division (GAD) director for review and determination.
   (iii) EPD director and the FPAC-BC GAD director will determine if the revisions are consistent with ACEP-ALE authorities and policy and Title 120, General Manual (GM), Part 401. EPD will consult with the USDA Office of General Counsel as needed to determine the consistency of the revisions with the statutory or regulatory authorities of ACEP-ALE.
   (iv) State conservationists must receive written approval from EPD director authorizing the specific revisions to the cooperative agreement template. Prior to executing a cooperative agreement containing revisions approved by the EPD director, the State conservationist must also have a written delegation of authority letter from the regional conservationist specific to the individual cooperative agreement.

(5) The published cooperative agreement template and any approved revisions thereto provide the needed flexibility to meet program purposes and goals at the State or local level while satisfying all ACEP-ALE program requirements.

C. ACEP-ALE Grant Agreements

(1) ACEP-ALE grant agreements may only be used by certified eligible entities. The ACEP-ALE grant agreement published by NHQ must be used as written, revisions to the grant agreement are not authorized. The grant agreement is inherently more flexible and contains fewer specific terms than the cooperative agreement.
(2) Acceptance of the grant agreement as published by NHQ is a condition of certification and eligible entities must affirm their ability and willingness to use the published grant agreement at the time certification is requested.

D. ACEP-ALE Program Agreements:

(1) For ACEP-ALE program agreements, States must have written authorization from the Deputy Chief for Programs prior to use of this agreement type. Upon receiving such authorization, a template ACEP-ALE program agreement will be provided by NHQ to States for their use along with the applicable program agreement guidance.
(2) The terms of the template ACEP-ALE program agreement make it applicable for use by noncertified or certified eligible entities and cannot be modified. Authorization to use an ACEP-ALE program agreement is limited to those eligible entities that agree

to operate under the terms of the program agreement as written. For eligible entities provided the option to enter into an ACEP-ALE program agreement that are unable to agree to the terms of such agreement, the ACEP-ALE cooperative agreement and grant agreement options, as applicable, remain available to such eligible entities.

E. Required Provisions for All ALE-Agreement Types.—ALE-agreements must contain the provisions necessary to ensure the ACEP-ALE program purposes and requirements are met and the ALE-agreement is implemented in compliance with NRCS authorities. The specific terms of these required provisions are included in the standard ALE-agreement templates published by NHQ. Required provisions of the ALE-agreements include, but are not limited to—

(1) Identification of the parties to the agreement, including the eligible entity.
(2) The interests in land to be acquired, including the United States' right of enforcement, the ACEP-ALE regulatory deed requirements that must be addressed in the conservation easement deed, and other terms and conditions of the easement deed. This is done either through the use or incorporation of the ACEP-ALE minimum deed terms, or for certified eligible entities operating under a grant agreement or the certified entity provisions of a program agreement, through a conservation easement deed that the certified entity is responsible to ensure addresses the ACEP-ALE regulatory deed requirements.

Note: The conservation easement deeds are subject to the regulatory deed requirements in place during the Farm Bill under which the ALE-agreement was originally executed.

(3) The administration, management, and enforcement of the rights on easements acquired with ACEP-ALE funds by the eligible entity or its successors or assigns.
(4) The responsibilities of NRCS.
(5) The responsibilities of the eligible entity on easements acquired with ACEP-ALE funds.
(6) Identification and responsibilities of any other eligible entities other than the primary eligible entity, or other legal entities that may be co-holders or third-party right holders and may be party to the agricultural land easement, the ALE-agreement, or as applicable, associated ACEP-ALE cost-share contracts.
(7) The requirements related to the development and approval of agricultural land easement plans, including highly erodible land (HEL) conservation plans, as follows:
  (i) For all ACEP-ALE enrollments, for each parcel that contains highly erodible cropland to have an HEL conservation plan provided by NRCS prior to closing, and
  (ii) For 2018 Farm Bill enrollments, as agreed-to by the eligible entity as a condition of ranking and selection, the requirement for an agricultural land easement plan provided by the eligible entity (see subpart G, section 528.63C of this part).
  (iii) For 2014 Farm Bill enrollments, all ALE-agreements must include the requirement that each parcel must have an agricultural land easement plan that is approved by NRCS State conservationist and signed by the landowner and the eligible entity (see subpart G, section 528.63B of this part).
(8) The allowance of eligible parcel substitution upon mutual agreement of the NRCS State conservationist and the eligible entity.
(9) The certification by the landowner prior to the planned easement closing date of the extent of any charitable contribution or other donation the landowner has provided to the eligible entity.

(10) The requirement for the entity to provide a breakdown of the amounts of each of the permitted sources that comprise the non-Federal share provided by the eligible entity.

For 2018 Farm Bill enrollments, this includes the requirement for the submission of supporting documentation for the procured costs paid to a third-party for the items that may be included in the non-Federal share calculation, when such costs are relied upon by the eligible entity to meet the non-Federal share requirement.

(11) The length, expiration date, and process for extension or amendment of the ALE-agreement.

(12) Standard provisions or required information related to ALE-agreements, including provisions requiring the eligible entity to comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282, as amended) and as applicable, 2 CFR Parts 25 and 170, related Executive orders, and Office of Management and Budget circulars.

(13) Reporting requirements.

(14) For ACEP-ALE cooperative and grant agreements only.—An attachment with the list of all parcels selected for funding and all substitute parcels identified at the time the ALE-agreement is executed, including the following information for each parcel:
(i) The ACEP-ALE parcel ID
(ii) The landowner's names
(iii) Estimated acres
(iv) Estimated fair market value of the agricultural land easement
(v) Estimated eligible entity cash contribution information
(vi) Estimated ACEP-ALE Federal share

(15) For ACEP-ALE program agreements only.—Attachments to the agreement at the time of agreement execution will include the following:
(i) The list of eligible entities that are party to the agreement
(ii) The list of co-holders that are party to the agreement and may be identified as a co-holder (grantee) of an agricultural land easement acquired pursuant to the ACEP-ALE program agreement
(iii) The list of third-party right holders, identified at the time of agreement execution that may be identified as a holder of third-party rights or interests (not a grantee) in an agricultural land easement acquired pursuant to the ACEP-ALE program agreement
(iv) Additional ACEP-ALE program agreement provisions agreed to by NRCS and the eligible entity
(v) Template ACEP-ALE cost-share contract documents that will be used for individual parcel contracts

(16) For buy-protect-sell transactions the ALE-agreement will also include the requirements identified in the buy-protect-sell supplemental guidance.

(17) Other requirements deemed necessary by NRCS to meet the purposes of this part or protect the interests of the United States.

528.51 ACEP-ALE Cooperative and Grant Agreements: Fund Obligation and Adjustments

A. Overview

(1) At the time of application, the entity provides a breakdown of the estimated fair market value of the agricultural land easement, the purchase price, the amounts and composition of the non-Federal share, and the requested Federal share for each

individual parcel. The Federal share may not exceed 50 percent of the appraised fair market value of the agricultural land easement except in the case of grassland of special environmental significance, in which case the Federal share may not exceed 75 percent of the appraised fair market value of the agricultural land easement.

(2) After eligibility determinations and ranking have been completed, the State conservationist tentatively selects parcels for funding. The parcels tentatively selected for funding and the estimated Federal share amount for each parcel are listed in an attachment to the ALE-agreement. Eligible, high-ranking, unfunded substitute parcels may also be identified on the attachment at this time.

(3) The ACEP-ALE cooperative or grant agreement is the document used to obligate the ACEP funds that may be provided to the eligible entity for the purchase of agricultural land easements. The amount of ACEP funds obligated is based on the cumulative total of the estimated Federal share of the tentatively selected parcels listed on the attachment to the agreement. There is only one attachment for a fiscal year.

(4) If the terms of the ACEP-ALE cooperative or grant agreement allow for amendments to add a new attachment to add funds in subsequent fiscal years for additional parcels selected for funding, a new attachment is developed for that fiscal year and an amendment to the agreement executed to add new funds and parcels prior to the obligation deadlines for the given fiscal year. The new attachment and the amendment to the ACEP-ALE cooperative or grant agreement are used to obligate the funds in the subsequent fiscal year.

Note: Fiscal year-specific program guidance will identify whether ALE-agreements entered into in that fiscal year may include terms authorizing amendments to add new attachments for subsequent fiscal year funding or parcels. At a minimum, subsequent fiscal year attachments to add new parcels are not authorized for ALE-agreements executed in fiscal years 2014 and 2019. Additionally, as of the date of enactment of the 2018 Farm Bill, all ALE-agreements entered into under the 2014 Farm Bill, may not be amended to add new attachments for new parcels or funding.

(5) The estimated Federal share for the individual parcel tentatively selected for funding as identified on the attachment, represents the maximum amount of ACEP funds that may be provided to the eligible entity for the purchase of that individual agricultural land easement.

(6) Once an individual parcel has an approved fair market value of the agricultural land easement the State conservationist must determine whether to adjust the Federal share amount for the individual parcel as follows:

(i) If the final approved fair market value of the agricultural land easement is lower than the originally estimated amount or other changes result in non-Federal share contributions below required levels, the Federal share for the parcel must be decreased as needed to ensure that no more than the maximum allowable ACEP-ALE cost-share amount is provided for the individual parcel. The ACEP-ALE funds that become available as a result of a decrease in the Federal share remain available for use under that ACEP-ALE cooperative or grant agreement attachment.

(ii) If the final approved fair market value of the agricultural land 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 ACEP-ALE cost-share amount. Pursuant to the terms of the ALE-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 that is within the scope of the original ACEP-ALE cooperative or grant agreement and if there are sufficient funds remaining available in the attachment on which the parcel is listed.

(iii) If there is a change to a parcel selected for funding that is outside the scope of the original ACEP-ALE cooperative or grant agreement, a separate determination of funding must be made before acquisition of the agricultural land easement may continue on that parcel under the same ACEP-ALE cooperative or grant agreement or attachment thereto. Out-of-scope changes typically include changes in the land offered for enrollment after the ACEP-ALE cooperative or grant agreement is executed or after the appraisal is completed, including acreage substitutions, additions, or deletions, affecting more than 10 percent of the original acreage. Depending on the timing and circumstances of the out-of-scope changes, the parcel may need to be reranked, reappraised, and have updated eligibility determinations made.

(7) The State conservationist is responsible for managing the ACEP funds obligated to the ACEP-ALE cooperative or grant agreement. Once funds are obligated to the ACEP-ALE cooperative or grant agreement or attachment thereto, the number of parcels ultimately funded and any subsequent increases or decreases in the Federal share amounts for the individual parcels must be managed within the funds obligated to that agreement within each attachment. Additional ACEP-ALE funds will not be obligated for increases in the Federal share amounts for individual parcels as long as funds remain available in the attachment on which the parcel is listed.

B. Obligation of Funds Through the Agreement

(1) Prior to the execution of an ACEP-ALE cooperative or grant agreement or an amendment to an existing agreement to increase the obligation of funds, the State conservationist, and Easement Acquisition Branch (EAB) if applicable, must ensure all necessary reviews and authorizations are in place. Therefore, the following actions must occur for all new ACEP-ALE cooperative and grant agreements and amendments to such existing agreements to increase the obligation of funds through subsequent year attachments:

(i) They must be submitted to FPAC-BC GAD for review and approval in accordance with applicable FPAC-BC GAD policy and procedure, including any fiscal year-specific guidance, must receive a Notice of Award (NOA) from FPAC-BC GAD, and must comply with applicable delegation of authority requirements.

(ii) They must have a first- and second-level preobligation internal controls review completed pursuant to the most current easement internal controls policy in National Instruction 300-300, “Instruction and Guidance for State Implementation of Easement Internal Controls Prior to Obligation, Payment, and Closing,” and applicable updates.

(iii) Additionally, those ACEP-ALE cooperative or grant agreements or amendments that exceed the State’s identified threshold or meet other submission criteria for national-level internal controls review under the most current easement internal controls policy must be submitted for national-level internal controls review. National-level preobligation internal control reviews may take up to 30 days after all required materials are submitted.

(2) After all required reviews are conducted and the State conservationist receives required approvals and delegations of authority, the ACEP-ALE cooperative or grant

agreement or amendment thereto will be sent to the eligible entity for signature. After the eligible entity executes the required documents, the State conservationist, on behalf of the CCC, executes the required documents. Following execution of the ALE-agreement documents by the required parties, ACEP funds will be obligated in Financial Management Modernization Initiative (FMMI) and within 10 business days of obligation NRCS will promote the agreement and associated parcels in easement business tool (e.g., NEST).

(i) The fully executed ACEP-ALE cooperative or grant agreement, including the fully executed Notice of Award, is the document that authorizes NRCS to obligate ACEP-ALE funds for the eligible entities to purchase agricultural land easements from eligible landowners on eligible parcels selected for funding.

(ii) Funds obligated in a given fiscal year to the ACEP-ALE cooperative or grant agreement may be expended over multiple years in accordance with the terms and deadlines identified in the agreement.

(iii) If the terms of the ACEP-ALE cooperative or grant agreement allow for amendments to add funds and parcels in subsequent fiscal years, the subsequent fiscal year's selected eligible parcels will be identified on a new attachment to the agreement. There is no guarantee of funding for additional parcels in subsequent fiscal years.

C. Parcels Listed in Attachments to the ACEP-ALE Cooperative or Grant Agreement

(1) An individual attachment to the ACEP-ALE cooperative or grant agreement lists the parcels that are intended to be acquired with the funds obligated in that fiscal year. In addition, the attachment may list substitute eligible parcels.

(2) The terms of the ACEP-ALE cooperative or grant agreement provide that nothing in the agreement obligates NRCS or the entity to purchase all or any of the agricultural land easement parcels listed on the attachment. Listing parcels on the ACEP-ALE cooperative or grant agreement attachment and obligation of funds often occurs prior to the completion of due diligence investigations, appraisals and reviews, and title clearance.

(3) Due to changing circumstances, including but not limited to landowner withdrawal, insufficient funds, unapproved appraised values, inability to provide clear title or sufficient access, hazardous materials issues, or expiration of offers, parcels originally selected for funding may ultimately not be funded or may be removed from the attachment. If sufficient funds remain available in the ACEP-ALE cooperative or grant agreement attachment, eligible parcels listed as substitutes on that attachment may be identified as selected for funding or new eligible parcels not listed as substitutes may be added through an amendment to the ALE-agreement and selected for funding. Substitute parcels may be selected for funding as long as the substitute parcel as configured at the time it is selected for funding:

(i) Is replacing a parcel previously selected for funding;

(ii) Is owned by landowners that meet the ACEP-ALE landowner eligibility criteria in the fiscal year the parcel is selected for funding;

(iii) Meets ACEP-ALE land eligibility criteria;

(iv) Can be purchased with the existing funds obligated in the ACEP-ALE cooperative or grant agreement attachment under which the parcel will be funded;

(v) Provides an equivalent or greater conservation value than the deleted parcel;

(vi) Is the highest-ranked unfunded parcel of the available substitute parcels offered under the agreement; and

(vii) Ranks high enough to be selected for funding in the fiscal year in which it is added to the ALE-agreement, unless there are changes to the offered parcel that require the reconfigured parcel to be reranked (see paragraph (5) below).

(4) If a parcel is listed as selected for funding on an ALE-agreement attachment, it must not be listed as a funded or substitute parcel on any other ALE-agreements.

(5) The substitution of acres within a pending offer must not decrease the conservation value of the offered easement or the value of the parcel in meeting the program purposes. If the substitution of the acres affects more than 10 percent of the originally offered area, the parcel must be reranked using the most current ALE ranking criteria and factors. The reconfigured parcel must rank high enough to be selected for funding in the fiscal year in which it is reranked. If lands of lesser fair market value are substituted in the pending offer, the Federal share amount must be reduced as needed according to a new appraisal.

D. Documenting Landowner Changes After Enrollment and Prior to Easement Acquisition

(1) Preacquisition: Transfer or Sale of Parcel Prior to Closing the Agricultural Land Easement

(i) Any parcel identified as selected for funding on an active, unexpired ALE-agreement attachment that is sold or transferred by any or all of the landowners of record (including the current landowner entering into a contract to sell the land subject to the written pending offer from the eligible entity or the death of the original landowner) prior to the easement being perfected except as part of an approved buy-protect-sell transaction will result in the parcel being removed from the ACEP-ALE cooperative or grant agreement attachment unless the new landowner meets the eligibility requirements in subpart D, section 528.35 of this part, subject to the timing requirements in this section and is willing to accept the terms and conditions of the enrollment and the eligible entity is willing to provide and execute the documents necessary to identify the new landowner on a memorandum to the ACEP-ALE cooperative or grant agreement (see subpart U of this part for sample memorandum to the ACEP-ALE cooperative or grant agreement to document preclosing landowner changes).

(ii) Before the memorandum to ACEP-ALE cooperative or grant agreement may be completed to identify the new landowners of the parcel, the new landowners must submit a new parcel application (NRCS-CPA-41A, or successor form) and all required ownership and eligibility documentation, must be determined eligible, and must have current records with the Farm Service Agency (FSA) (see subpart D, section 528.35 of this part for additional detail). Additionally, the eligible entity must provide NRCS a written pending offer that is valid for the new landowner.

(iii) The new landowner must be eligible for the fiscal year in which the memorandum to the ACEP-ALE cooperative or grant agreement will be signed by the State conservationist to identify the new landowner of the parcel. NRCS will only sign the memorandum to identify the new landowners after all landowners have been determined eligible.

(iv) After the memorandum is signed by NRCS and the eligible entity, the landowner identification and ownership shares in the applicable business tools (e.g. NEST, FMMI) must be updated to reflect the actual ownership and ownership shares based on the most current evidence of land ownership. If adjustments in FMMI are necessary based on the change, then as soon as possible after signing the memorandum, a copy must be provided to the appropriate financial specialist to make the adjustments in FMMI.

(v) A copy of the fully executed ACEP-ALE cooperative or grant agreement including any memoranda identifying new landowners must be included in the preclosing and prepayment internal control review documents packages.

(vi) If the new landowner is unwilling or unable to execute the parcel application (NRCS-CPA-41A, "Parcel Sheet for Entity Application for an ALE Agreement," or successor form) or is unable to establish eligibility for the fiscal year in which the transfer memorandum will be signed by the State conservationist and filed with the ALE-agreement, or if the eligible entity is unwilling or unable to provide a valid written pending offer, the eligible entity will be notified that the ACEP-ALE cooperative or grant agreement must be amended to remove the parcel. The notification should also provide the eligible entity an opportunity to identify a substitute parcel to be selected for funding as described in paragraph C above. NRCS will provide the eligible entity an amendment to execute the necessary changes to the ACEP-ALE cooperative or grant agreement attachment based on the entity response to the notification (see subpart U of this part for a template letter for notification of ACEP-ALE cooperative or grant agreement amendment for landowner changes).

(vii) For 2014 Farm Bill Only

- An ACEP-ALE cooperative or grant agreement executed under the 2014 Farm Bill does not have to be amended when the land is sold to the identified prospective owner prior to easement closure as part of an approved buy-sell-protect scenario provided that all buy-sell-protect requirements were met at the time the parcel was identified on the attachment, including that the prospective landowner—
  - Submitted an NRCS-CPA-41A at the original time of application.
  - Was determined eligible for the fiscal year the parcel was originally identified as selected for funding.
  - Was identified on the ACEP-ALE cooperative or grant agreement attachment at that time.
- If prior to easement closure there is a change in the landownership to someone other than the prospective owner identified at the time of enrollment, the procedures described in steps (i) through (vi) of this section must be followed.

Note: Buy-sell-protect transactions under the 2014 Farm Bill are distinct from buy-protect-sell transactions authorized under the 2018 Farm Bill. Therefore, buy-sell-protect transactions as permitted under the 2014 Farm Bill are limited to those parcels listed as selected for funding or substitute parcels on ALE-agreement attachments that were fully executed prior to the date of enactment of the 2018 Farm Bill.

(viii) For 2018 Farm Bill Enrollments Only

For individual parcels that are subject to an approved buy-protect-sell transaction, the procedures for determining and documenting landowner eligibility over the course of the transaction are set forth in specific guidance for buy-protect-sell transactions provided to States with such approved transactions.

(2) Preacquisition.—Corrections to Landowners Identified on an Active ACEP-ALE Cooperative or Grant Agreement

(i) If any landowners that held a fee or title interest in the subject parcel at the time it was identified as selected for funding on the ACEP-ALE cooperative or grant agreement attachment 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, and a memorandum to the ACEP-ALE cooperative or grant agreement attachment must be filed. 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 was parcel identified as selected for funding. (See subpart U of this part for sample memorandum to the ACEP-ALE cooperative or grant agreement to document preclosing landowner changes.)

(ii) Before the memorandum may be completed to correctly and accurately identify the landowners of the subject parcel, any newly or differently identified landowners must submit a parcel application (NRCS-CPA-41A, or successor form) and all required ownership and eligibility documentation. All landowners must meet the eligibility requirements in subpart D, section 528.35 of this part, must have their FSA records up to date, and be determined eligible for the fiscal year the parcel was originally identified as selected for funding on the ACEP-ALE cooperative or grant agreement attachment.

(iii) After the memorandum is signed by the State conservationist and the eligible entity, the landowner identification and ownership shares in the applicable business tools (e.g., NEST, FMMI) must be updated to reflect the actual ownership and ownership shares based on the most current evidence of land ownership. If adjustments in FMMI are necessary based on the change, then as soon as possible after signing of the memorandum, a copy must be provided to the appropriate financial specialist to make the adjustments in FMMI.

(iv) A copy of the fully executed ACEP-ALE cooperative or grant agreement, including any memoranda to correct identified landowners, must be included in the preclosing and prepayment internal control review documents packages.

(v) If all of the required landowners are unwilling or unable to execute the parcel application (NRCS-CPA-41A, or successor form) or establish eligibility for the fiscal year the parcel was originally identified as selected for funding, the eligible entity will be notified that the ACEP-ALE cooperative or grant agreement must be amended to remove the parcel. The notification should also provide the eligible entity an opportunity to identify a substitute parcel to be selected for funding as described in paragraph C above. NRCS will provide the eligible entity an amendment to execute the necessary changes to the ACEP-ALE cooperative or grant agreement attachment based on the entity response to the notification. (See subpart U of this part for a template letter for notification of ACEP-ALE cooperative or grant agreement amendment for landowner changes.)

(3) Preacquisition: Changes in Composition of a Landowner-legal Entity Under an Active ACEP-ALE Cooperative or Grant Agreement

(i) For a parcel owned by a landowner that is a legal entity or general partnership and identified as selected for funding on an active, unexpired ACEP-ALE cooperative or grant agreement attachment the landowner-legal entity and any required members must meet the landowner eligibility requirements outlined in subpart D of this part (see section 528.35 for additional detail). The AGI determination, including any approved AGI waivers, for the landowner-legal entity made at the time the parcel is identified as selected for funding on the attachment remains in effect for the duration of the enrollment unless there is a change in the membership of the landowner-legal entity. The HEL/wetland conservation (WC) eligibility is determined at the time of enrollment and again at the time of each payment.

(ii) Changes in the membership of a landowner-legal entity must be documented by the landowner-legal entity submitting a revised Form CCC-901 or CCC-902E to FSA. The terms of the Form CCC-901 or CCC-902E require the landowner-legal entity to provide timely written notification to FSA of any changes in the information provided on the Form CCC-901 or CCC-902E, including changes in the composition of the entity.

(iii) Prior to payment, NRCS must check the most current Form CCC-901 or CCC-902E on file with FSA to determine if there has been a change in entity membership since the time of enrollment. If there has been a change in the entity membership since the time of enrollment, the landowner-legal entity and any new members must meet the eligibility requirements in subpart D, section 528.35 of this part, for the fiscal year in which the Federal share will be provided to the eligible entity for the purchase of the ALE. The eligibility for the landowner-legal entity and any new members must be determined to confirm that the landowner-legal entity is still eligible and whether any commensurate reductions for AGI must be applied to the Federal share provided by NRCS. If a landowner-legal entity has an existing AGI waiver and the only change is to the landowner-legal entity membership, and FSA determines the landowner-legal entity includes members that do not meet the AGI provisions, the existing AGI waiver can be used. If a landowner-legal entity, including all required members, met the AGI limitation at the time of enrollment but due to changes in its entity membership is subsequently determined by FSA to not meet the AGI provisions, such landowner-legal entity may request an AGI waiver at the time the revised AGI determination is made (see subpart D, section 528.35 of this part). HEL/WC will be rechecked for the landowner-entity for each fiscal year in which a payment is to be made.

(iv) If based on this review the landowner-legal entity is determined to be eligible, including those granted an AGI waiver, it is not necessary to amend the ACEP-ALE cooperative or grant agreement if only the membership of the landowner-entity has changed.

(4) For each scenario described in paragraphs (1) through (3) above, if the landowner is a legal entity or general partnership, NRCS will notify the eligible entity if the applicable AGI eligibility determination requires a commensurate reduction to the Federal share, unless a waiver of the AGI limitation is requested by the landowner-legal entity and granted by NRCS (see subpart D, section 528.35B of this part).

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

E. ACEP-ALE Cooperative and Grant Agreement Lengths, Deadlines, and Extensions

(1) Subject to the terms of expiration and extension specified in the NHQ-approved ALE-agreement itself:

(i) The initial term of an ACEP-ALE cooperative agreement may be up to 3 fiscal years following the fiscal year the agreement is executed by all parties, with the possibility of two consecutive 12-month extensions for a maximum total term of 5 fiscal years following the fiscal year the agreement is executed by all parties.

(ii) The initial term of an ACEP-ALE grant agreement with a certified eligible entity may be up to 5 fiscal years following the fiscal year the grant agreement is executed by all parties, with the possibility of extensions for a maximum total term of 7 fiscal years following the fiscal year the agreement is executed by all parties.

(2) Each attachment to the ACEP-ALE cooperative or grant agreement is subject to the same expiration dates as the agreement itself.

(3) The standard expiration date for ACEP-ALE cooperative or grant agreements and associated attachments is August 31 of the applicable year, unless otherwise approved by NHQ. To request an extension of the agreement, including associated attachments, eligible entities must submit a request in writing to the State conservationist.

(i) Extensions requested to provide additional time to close easements on parcels that have been identified as selected for funding since the initial execution of the agreement should only be granted when delays are due to circumstances beyond the control of the entity.

Note: Authorizing agreement extensions may result in the reduced closing efficiency of the eligible entity. Closing efficiency is a consideration in ranking parcel applications submitted by the eligible entity as well as in an eligible entity request for certification.

(ii) Extending an agreement requires an amendment to the ACEP-ALE cooperative or grant agreement and any such amendment must be executed prior to expiration of the agreement.

(iii) Eligible entities must submit their request for an extension of an ACEP-ALE cooperative or grant agreement at least 60 days in advance of the expiration date.

(iv) A copy of each amendment must be uploaded into the applicable business tools (e.g., NEST).

(v) Agreements or attachments that are expired may not be extended under any circumstances.

(4) Subject to required approvals from FPAC-BC GAD, amendments to extend ACEP-ALE cooperative or grant agreements may only be approved and executed by the State conservationist, this authority may not be further delegated.

(5) Funds in ALE-agreements or attachments that are not disbursed before the ALE-agreement or attachment expires will be deobligated and returned to NHQ.

Note: ALE-agreements executed under the 2014 Farm Bill remain subject to the performance deadlines, expiration dates, attachment and extension provisions identified in the terms and conditions of the individual ALE-agreement.

528.52 ACEP-ALE Program Agreements and ACEP-ALE Cost-Share Contracts: Fund Obligation and Adjustments

Reserved

528.53 Determining Fair Market Value of the Agricultural Land Easement

A. General

(1) The Federal share must not exceed 50 percent of the fair market value of the agricultural land easement, as determined using any of the following and as approved by NRCS:

(i) An appraisal using the Uniform Standards of Professional Appraisal Practices (USPAP) or the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or "Yellow Book")

(ii) An areawide market analysis or survey

(iii) Another industry-approved method approved by NRCS

(2) For parcels selected for funding, the eligible entity is responsible for obtaining and providing NRCS with an acceptable determination of the fair market value of the agricultural land easements that conforms to applicable industry standards and NRCS specifications and meets NRCS appraisal policy, including the requirements found in this part and in 440- Conservation Programs Manual (CPM), Part 527, Subparts E and F.

(3) The eligible entity is approved to use either the USPAP or UASFLA appraisal methodologies. If the eligible entity requests to use an areawide market analysis or other industry-approved method, NRCS approval of the methodology is required prior to entering into the ALE-agreement.

(4) NRCS will review, for quality assurance purposes, appraisals, areawide market analysis, valuation reports, other information resulting from another industry-approved method approved for use by NRCS and associated technical reviews.

(5) Agency-approved appraisal reports and technical appraisal reviews must be retained in the individual easement case file. Electronic versions may be stored in lieu of the hardcopies. The easement business tool (e.g., NEST or successor system) should be used as the electronic storage location for the appraisal and technical review documents. The individual NRCS State office hardcopy easement file must identify the electronic location of the valuation documents for that easement.

B. Fair Market Value of the Agricultural Land Easement Using Individual Appraisals

(1) If the value of the easement is determined using an appraisal, the appraisal must be completed and signed by a State-certified general appraiser and must contain a disclosure statement by the appraiser (see 440-CPM-527, Subparts E and F).

(2) The effective date of the appraised value must be within 6 months before or after the date the ALE-agreement or applicable amendment, memorandum, or attachment thereto is executed by NRCS identifying the specific parcel as selected for funding or must be within 12 months of the easement closing date.

(3) Eligible entities must provide a copy of the applicable valuation report used to establish the fair market value of the agricultural land easement to NRCS at least 90 days prior to the planned easement closing date or the earlier whenever possible. NRCS must obtain a technical review and approve the value determination prior to the eligible entity's purchase of the easement, including payment of easement compensation to the landowner.

(4) Certified eligible entities under an ACEP-ALE grant or program agreement, must provide a copy of the appraisal report at the time the payment request is submitted. NRCS will obtain a technical review of a percentage of the appraisals as part of the quality assurance review process that occurs after an easement has been acquired. NRCS will conduct quality assurance reviews, including the technical appraisal review, on at least 15 percent of the completed agricultural land easement transactions submitted for payment each fiscal year. The percentage of quality assurance reviews conducted in a given fiscal year may be higher for certified entities with low numbers of transactions or with issues identified during the quality assurance reviews.

C. Fair Market Value of the Agricultural Land Easement Using Areawide Market Analysis

(1) An areawide market analysis for ACEP-ALE must result in a determination of a fair market value of the agricultural land easement, which requires a determination of both the unencumbered before value of the land uses included in the market area and an after value of such lands as encumbered by the specific terms of the agricultural land easement deed that must be used for all parcels. In order for these values to be

determined, the land uses and market areas identified must contain sufficient comparable sales for both the before- and the after-values to be determined.

(2) Requests by the eligible entity to obtain and use an areawide market analysis for determining fair market value of the agricultural land easement must be submitted to the State conservationist and approved by EPD director prior to entering into the ALE-agreement. As part of the request, the eligible entity must include the following documentation:
   (i) A map and description of the market areas to be analyzed;
   (ii) Adequately descriptive definitions of the land uses to be analyzed;
   (iii) The proposed standard agricultural land easement deed to be used on all enrollments within each market area; and
   (iv) A statement from a State-certified general appraiser (see 440-CPM-527-E) that there is sufficient homogeneity of the proposed market area and property types to be analyzed and that there are sufficient available comparable sales, for both the before and after condition, that it is their preliminary opinion that it is possible for an areawide market analysis to be completed in accordance with the NRCS statement of work and applicable industry standards.

(2) As part of the approval to use an areawide market analysis, EPD will provide the State conservationist and, as applicable, the EAB team, the specific provisions that must be included with the ALE-agreement to set forth the requirements and procedures for those entities that will be obtaining and using an areawide market analysis. The eligible entity may obtain the areawide market analysis after the ALE-agreement with the specific areawide market analysis provisions has been executed.

(3) The areawide market analysis must be conducted in accordance with NRCS specifications and completed and signed by a person determined by NRCS to have professional expertise and knowledge of agricultural land values in the area subject to the areawide market analysis (see subpart U of this part for the "Specifications and Scope of Work for Areawide Market Analysis for ACEP-ALE"). The areawide market analysis must be reviewed by the NRCS national appraiser and approved by the EPD director. The State conservationist must receive this written approval from the EPD director prior to calculating the final Federal share and issuing any payments for an ALE parcel listed on an ALE-agreement with approval to use an areawide market analysis.

(4) The original areawide market analysis, once approved by the NRCS national appraiser and EPD director, may be used as the basis for determining the fair market value of the agricultural land easement and the associated Federal share for parcels listed on an attachment A and an attachment B to an ALE-agreement. If a subsequent attachment to the same ALE-agreement is proposed and if no significant changes are anticipated in the fair market values from the original areawide market analysis, then the eligible entity may obtain a review and written statement from the appraiser who prepared the original areawide market analysis documenting that the fair market values have not changed significantly (no more than plus or minus 10 percent) and are still valid. The statement must explain the process used by the appraiser to make the determinations. If it is confirmed and documented that there are no significant changes, the eligible entity may request EPD approval through the State conservationist to use an extension to the original areawide market analysis rather than obtaining a new areawide market analysis. If the State conservationist concurs with this request, he or she will submit the request for EPD director approval. The per-acre fair market values for which the eligible entity will seek cost-share assistance from NRCS must remain the same or lower than those in the original analysis.

(i) For noncertified eligible entities with an ALE cooperative agreement originally executed with the required areawide market analysis provisions, the ALE areawide market analysis may only be reviewed and extended once following the original report and may only be used for parcels identified on an attachment C to the ALE cooperative agreement.

(ii) For certified eligible entities with an ALE grant agreement originally executed with the required areawide market analysis provisions, the ALE areawide market analysis may be reviewed and extended more than once following the original report. The original report must be reviewed annually, and the extension is only to be used for the parcels identified on the attachment in the year the extension is approved.

D. Fair Market Value of the Agricultural Land Easement Using Another Industry-Approved Method

Requests from eligible entities to use another industry-approved method must be submitted to State conservationist and approved by the Chief of NRCS prior to entering into the ALE-agreement. As part of the request, the entity must identify the industry-approved method proposed and copies of, or references to, the applicable industry standards. If approved, NRCS will identify the acceptable applicable industry standards and provide any associated NRCS specifications for the methodology approved.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart G – ACEP-ALE Deed, Title, and Plan Requirements

528.60 Agricultural Land Easement Deed Requirements

A. General Provisions

(1) The statutory purpose of ACEP-ALE is to protect the agricultural use and future viability and related conservation values of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values, and to protect grazing uses and related conservation values by restoring or conserving eligible land. Therefore, ACEP-ALE funds must result in long-term protection of agricultural land and the provisions of funded agricultural land easements must limit the nonagricultural use of the land that negatively affect the agricultural uses and conservation values and for grassland enrollments, must also limit the nongrassland uses of the land.

(2) Activities that meet the definition of agricultural uses provided in 7 CFR Section 1468.3 and as described in subpart D, section 528.33D(3) of this part, are deemed agricultural uses of the land for the purposes of ACEP-ALE. Activities that do not meet the definition of agricultural uses provided in 7 CFR Section 1468.3 and negatively affect the agricultural uses and conservation values must be limited or prohibited to protect the future viability of these uses and values.

(3) NRCS is required by law to ensure that ACEP-ALE funded agricultural land easement deeds contain provisions that ensure the ACEP-ALE purposes will be met. NRCS ensures that ACEP-ALE funds will result in agricultural land protection by—

(i) Evaluating land for ability to effectively protect agricultural and related conservation values using eligibility and ranking criteria.

(ii) Reviewing in coordination with the eligible entity, the conditions on the property, including preexisting rights in the property, such as mortgages, liens, and leases, to ensure there are not onsite or offsite conditions that would preclude or interfere with the ability of the parcel to meet program purposes.

(iii) Identifying the regulatory deed requirements that must be addressed and conducting reviews of agricultural land easement deeds to ensure provisions meet the program purposes and requirements.

(4) NRCS safeguards the public investment in agricultural land protection by requiring an eligible entity to place, monitor, and enforce appropriate prohibitions and limitations on nonagricultural and other incompatible uses in the deed terms. The eligible entity's deed terms must prohibit or limit nonagricultural uses that negatively affect the agricultural uses and conservation values. Nonagricultural uses that have a negative affect are those that are incompatible with agricultural uses and uses that involve a relatively irretrievable commitment of agricultural resources. For grassland enrollments, the deed must also prohibit or limit conversion to nongrassland uses.

(5) An eligible entity will acquire the agricultural land easement; hold title to the agricultural land easement; and manage, monitor, and enforce the agricultural land easements, with the United States holding a right of enforcement. An agricultural land easement may be held by one or more eligible entities. In addition to the identified eligible entities, the agricultural land easement deed may also identify co-holders or third-party right holders as described below:

(i) Co-Holders.—An eligible entity may identify in the agricultural land easement deed, other legal entities that will co-hold the agricultural land easement with the eligible entity. A legal entity that is functioning as a co-holder (rather than an eligible entity), is subject to the following requirements and limitations:

- Must be identified as a grantee on the agricultural land easement deed;
- May not receive direct payment of the Federal share provided by NRCS;
- Does not have to meet the requirements of being an eligible entity;
- Is considered a beneficiary of the Federal funds;
- Must have current registration in the Dun and Bradstreet Data Universal Numbering System (DUNS) and the System for Award Management (SAM); and
- Is required to comply with the terms of the ALE-agreement and must acknowledge their agreement to comply with the terms of the ALE-agreement by:
  - Signing the ALE-agreement in their capacity as a co-holder; or
  - For ACEP-ALE cooperative or grant agreements only, the co-holding entity may provide NRCS sufficient documentation of their status as subrecipient of Federal funds and acknowledgement of the requirement to comply with the terms of the ALE-agreement.

(ii) Third-Party Right Holders.—An eligible entity may identify in the agricultural land easement deed a third-party right holder that has specific rights or responsibilities but is not listed as grantee. These may include, but are not limited to, appropriately qualified third parties identified on the deed as having responsibilities to monitor or enforce the easement for specific purposes (such as historic or archaeological resources), to conduct monitoring of an ALE plan because they have a specific resource background (such as species monitoring or grassland monitoring), or the United States, which possesses a third-party right of enforcement. A third-party holder does not have to be party to the ALE-agreement, may not receive direct payment of the Federal share provided by NRCS, is not considered a beneficiary of Federal funds, and is not required to be registered in DUNS or SAM.

(6) When negotiating the terms of a conservation easement deed, the eligible entity and landowner should consult with their own attorneys and other technical and financial advisors to ensure that all legal requirements and any applicable Internal Revenue Service requirements are met as NRCS makes no representations and will not provide advice regarding the tax implications of these transactions.

(7) Section 1265(a) of subtitle H of the Food Security Act of 1985 provides for the purchase of an easement "or other interests in eligible land." Such other interests must have the same purpose of protecting the agricultural use of the land and must follow the same guidelines as agricultural land easements set forth in this policy. Wherever the terms "agricultural land easement," "conservation easement," "agricultural land easement deed," or "conservation easement deed" appear, they include such other interests in eligible land. State offices must obtain prior approval from the EPD director for any use of ACEP-ALE funds towards the acquisition of "other interests in land."

B. Survey Requirements

(1) The legal description of the ACEP-ALE parcel must conform to the description set forth in the title records for the funded parcel. Existing legal descriptions or surveys of the boundary of the ACEP-ALE parcel and the appropriate record book and page,

as well as the tax parcel number where required, must be referenced in the conservation easement deed.

(2) The legal description of the ACEP-ALE parcel must comply with the survey standards in the State in which the parcel is located. Both existing and new legal descriptions must close to within the tolerances set by the State survey standards. NRCS has no separate ACEP-ALE boundary or survey standards or requirements.

(3) The eligible entity must obtain a new boundary survey and legal description to State survey standards if any of the following apply:

(i) The legal description of the ACEP-ALE funded easement area is different than the current legal descriptions of record, unless NRCS determines the current legal description is adequate for ACEP-ALE purposes.

(ii) NRCS determines the current legal description that would be relied upon for the ACEP-ALE parcel is not accurate.

(iii) The ACEP-ALE funds are being used to protect less than the entire area protected by a larger conservation easement and the current legal description does not match the ACEP-ALE portion.

(iv) The State conservationist has for their State established conditions under which a new or updated survey or legal description is required.

C. Baseline Documentation

(1) The eligible entity must provide a baseline documentation report for each parcel to NRCS prior to closing on the easement (see subpart U of this part for baseline documentation example). The baseline documentation report must be appended to the agricultural land easement deed or incorporated by reference.

(2) The baseline documentation report must contain maps and full descriptions and pictures of items including but not limited to:

(i) Property location

(ii) Land use, land cover, and its condition

(iii) Crops and crop rotations

(iv) All physical structures, infrastructure, and improvements, including barns, sheds, corrals, fences, ponds, watering facilities, and roads

(v) Irrigation rights and volume of irrigation water rights to be retained for the easement

(vi) Any problem areas

(vii) Any special features for which the parcel is being protected, such as historical or archaeological resources or habitat, species, or sensitive natural resources identified for protection

(viii) For grassland enrollments: the condition of the grassland, pasture, range, hay or forest lands; animal inventories and waste storage facilities; and any critical nesting habitat for declining populations of grassland dependent birds.

Note: See subpart U of this part for baseline documentation report items.

(3) An eligible entity operating under an ACEP-ALE cooperative agreement must provide NRCS a draft baseline documentation report at least 90 days prior to the planned closing date of the agricultural land easement. A certified eligible entity operating under an ACEP-ALE grant agreement must provide NRCS the baseline documentation report at the time payment request is submitted. Under an ACEP-ALE program agreement, the eligible entity must provide the draft or final baseline documentation report as specified in the terms of the agreement.

D. Regulatory Deed Requirements

(1) The eligible entity may use its own terms and conditions for the deed of agricultural land easement and must ensure that agricultural land easements acquired with ACEP-ALE funds meet the following requirements:

(i) Address all of the regulatory deed requirements as published in 7 CFR Section 1468.25(d).

Note: All ALE-agreements originally executed under the 2014 Farm Bill are subject to the regulatory deed requirements in 7 CFR Section 1468.25(d) in effect prior to the date of enactment of the 2018 Farm Bill (December 20, 2018), unless an earlier version of the regulation was identified in the originally executed ALE-agreement.

(ii) Conveyed for the purpose of protecting natural resources and the agricultural nature of the land.

(iii) Run with the land in perpetuity, or where State law prohibits or does not authorize a permanent easement, for the maximum duration allowed under State law (see paragraph E below).

(iv) Protect the agricultural use, future viability, and related conservation value of the parcels by limiting nonagricultural uses of that land or protect grazing uses and related conservation values by restoring or conserving eligible land, including:

- Identification of building envelopes and associated limitations on new construction on the easement area, also referred to as "protected property" (see paragraph G below).
- Specific protections related to the specific purposes for which the parcel was ranked or selected, including historical or archaeological resources or grasslands of special environmental significance.

(v) Provide for the effective administration, management, and enforcement of the agricultural land easement by the eligible entity or its successors and assigns.

(vi) Include the required United States right of enforcement language that is specified by NRCS (see paragraph (4) below), including a provision that such interest remains in effect for the duration of the easement, and any changes that affect NRCS's interest in the agricultural land easement must be reviewed and approved by NRCS.

(vii) Provide the United States access to the easement area sufficient to ensure compliance pursuant to its right of enforcement.

(viii) Include an indemnification clause requiring the landowner to indemnify and hold harmless the United States from any liability arising from or related to the property enrolled in ACEP-ALE.

(ix) Specify that impervious surfaces will not exceed 2 percent of the ACEP-ALE easement area, excluding NRCS-approved conservation practices, unless NRCS grants a waiver (see paragraph F below).

(x) Prohibit commercial and industrial activities except those activities that are consistent with the agricultural uses of the land.

(xi) Prohibit surface and subsurface mineral development unless the required provisions for surface or subsurface mineral exploration and extraction are included in the deed terms (see paragraph I below).

(xii) Prohibit or limit the subdivision of the property subject to the agricultural land easement (see paragraph H below).

(xiii) Include applicable agricultural land easement and highly erodible land (HEL) conservation plan requirements and provisions as follows:

- 2014 Farm Bill enrollments: subject the parcel to an approved agricultural land easement plan.
- 2018 Farm Bill enrollments:
  - For parcels that contain highly erodible cropland, include terms that ensure compliance with the HEL conservation plan that will be developed and managed in accordance with the Food Security Act of 1985, as amended, and its associated regulations.
  - Include language requiring the development and maintenance of an agricultural land easement plan, if agreed to by the eligible entity as a condition of selection and funding.

(xiv) Include an amendment clause requiring changes to the easement deed after its recordation be consistent with ACEP-ALE purposes and subject to NRCS approval prior to such amendment (see subpart R of this part for requirements applicable to easement administration actions).

(xv) Include terms, if required by the eligible entity, that identify an intent to keep the land subject to the agricultural land easement under ownership of a farmer or rancher.

(xvi) Include other minimum deed terms specified by NRCS to ensure that ACEP-ALE purposes are met.

(2) For ACEP-ALE cooperative agreements and as authorized, ACEP-ALE program agreements, the ACEP-ALE minimum deed terms addendum, or EPD-approved entity-specific deed template (see section 528.61 below) that addresses the regulatory deed requirements will be included as an attachment to the agreement. Each individual agricultural land easement deed must be approved by NRCS prior to closing and must be submitted to NRCS at least 90 days before the planned easement closing date for review and approval.

(3) For ACEP-ALE grant agreements or as authorized, ACEP-ALE program agreements, with certified eligible entities, the certified eligible entity is responsible to ensure the terms of their agricultural land easement deed addresses the regulatory deed requirements as identified in the agreement. NRCS's review of the agricultural land easement deed will occur after acquisition in accordance with the provisions of the grant agreement and the requirements of this manual.

(4) The standard required United States right of enforcement clause that must be included in all agricultural land easement deeds is provided as follows:

(i) For ALE-agreements executed under the 2014 Farm Bill, the terms of the United States right of enforcement clause are subject to the regulatory deed requirements in 7 CFR Section 1468.25(d) as published January 1, 2018, unless an earlier version was included in the originally executed ALE-agreement. The specific language of the United States right of enforcement clause that must be used in the deeds of agricultural land easements enrolled under such agreements is limited to the language provided by NRCS in the versions of the standard ACEP-ALE minimum deed terms addendum, or for certified eligible entities in the terms of the ACEP-ALE grant agreement that were approved for use under the 2014 Farm Bill.

(ii) For ALE-agreements executed under the 2018 Farm Bill, the standard United States right of enforcement clause provided below and in the executed ALE-agreements must be included in the agricultural land easement deeds of all agricultural land easements acquired under such agreements:

"Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the ALE Deed are not

enforced by the Grantee. The Secretary of the United States Department of Agriculture (the "Secretary") or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Grantee, or its successors or assigns, fails to enforce any of the terms of this ALE Deed, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this ALE Deed from the Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this ALE Deed from the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the ALE Deed against the Grantor, up to the amount of the United States' contribution to the purchase of the ALE.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with the ALE Deed. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the ALE Deed and the United States ALE-Agreement with the Grantee, the United States will have reasonable access to the Protected Property. Prior to its inspection of the Protected Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Protected Property to prevent, terminate, or mitigate a potential or unaddressed violation of the ALE Deed and will give notice to Grantee and Grantor at the earliest practicable time."

(5) NRCS may request the Office of General Counsel's (OGC) assistance with agricultural land easement deed reviews.

E. Agricultural Land Easement Duration

ACEP agricultural land easements must be perpetual or for the maximum duration allowed under applicable State laws. Where State laws have not authorized or prohibit perpetual conservation easements, ACEP agricultural land easements must be for the maximum duration authorized by State law, but under no circumstances less than 30 years. Some States allow landowners the right to revisit and terminate their conservation easements after a certain time period. Agricultural land easements that contain such language may only be funded if such termination rights are mandated by State law. NRCS may choose not to fund agricultural land easements in States that allow for the termination of a conservation easement.

F. Impervious Surface

(1) Impervious surfaces will not exceed 2 percent of the ACEP-ALE easement area, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the parcel; this includes, but is not limited to, buildings with or without flooring, paved areas, and

any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to the agricultural land easement.

(2) The noncertified or certified eligible entity may submit a request for waiver of the 2-percent impervious surface limitation for each parcel to the State conservationist not less than 90 days prior to closing on the easement. The State conservationist may waive the 2-percent impervious surface limitation on an individual easement basis, provided that no more than 10 percent of the easement area is covered by impervious surfaces.

(3) Before waiving the 2-percent limitation, NRCS will consider, at a minimum, population density; the ratio of open, prime, and other important farmland versus impervious surfaces on the easement area; the impact to water quality concerns in the area; the type of agricultural operation; parcel size; and the purposes for which the easement was acquired. All approved impervious surface waivers will be documented and the evidence retained in the individual easement case file. (See subpart U of this part for the "ACEP-ALE Worksheet for 2-Percent Impervious Surface Waiver Determinations" provided as an example.)

(4) An eligible entity may also request a waiver to employ its own process for waiving the impervious surface limitation if the process is applied on an individual easement basis. The eligible entity's process for waiving the impervious surface limitation must be approved by the NRCS Deputy Chief for Programs. The entity must submit its request along with the details of their process to the State conservationist for their review. If the State conservationist concurs with the process and recommends approval, the State conservationist must forward their recommendation, along with the entity request and process information to EPD at least 90 days prior to planned closing date.

(5) NRCS will not approve blanket waivers or an entity process that approves blanket waivers of the impervious surface limitation. All ACEP-ALE easements must include language limiting the extent of impervious surfaces within the easement area.

G. Building Envelope

(1) A parcel may include one or more building envelopes as defined in subpart T, section 528.190 of this part. Building envelopes must be reasonable in size, number, and location, such that they are able to accommodate all existing building and structures and future construction, except for certain agricultural structures and utilities, while not being so large, numerous, or situated in a manner that may interfere with the agricultural operations or conservation values of the parcel. If the parcel will contain building envelopes, then the number, total acres, boundaries, and locations of existing and any future building envelopes must be identified and addressed in the deed under either a fixed or floating option:

(i) Fixed option.—All building envelopes are identified and agreed upon prior to closing. The deed terms identify the number and total acres of the building envelopes and the boundaries and locations of the building envelopes are identified in an exhibit attached to and recorded with the agricultural land easement deed; or

(ii) Floating option.—The deed terms will identify the number and total acres of the building envelopes but allow the boundaries and locations of such building envelopes to be determined after the easement has closed with the prior written approval of the eligible entity and the State conservationist. After approval, the agricultural land easement deed must be amended to add an exhibit which identifies the approved boundaries and location of the building envelopes.

(2) The agricultural land easement deed may also allow adjustments to the boundaries and location of building envelopes with prior written approval of the eligible entity and the State conservationist. After approval of such an adjustment, the agricultural land easement deed must be amended to add an exhibit which identifies the approved boundaries and locations of the building envelopes. However, the number and total acres of the building envelopes may not be increased after the easement has closed.

(3) If there are no existing structures on the easement area and the construction of new structures on the easement area will be prohibited, the entity must provide to NRCS a statement that the easement will have no building envelope and must address this prohibition in the agricultural land easement deed.

(4) For each parcel that will contain one or more building envelopes, the eligible entity must identify the number and total acres of the building envelopes in the agricultural land easement deed. Additionally, if the fixed option is selected, the eligible entity must also prepare and provide to NRCS a map of the location and boundaries of such building envelopes. Under ACEP-ALE cooperative agreements, or program agreements where authorized, the eligible entity must provide this information to NRCS no less than 90 days prior to the planned closing date. For ACEP-ALE grant agreements, or program agreements where authorized, the certified eligible entity must provide this information to NRCS within 30 days of recording the easement or requesting reimbursement, whichever is sooner.

(5) State conservationist approval of the location of future building envelopes under the floating option, or any adjustments to building envelopes after easement closing, will be conditioned on locating and sizing the building envelope to the greatest extent possible—

(i) To not include prime farmland.

(ii) Near existing roadways.

(iii) Near existing buildings, structures, and other approved building envelopes.

H. Subdivision

(1) The eligible entity must address the potential for future subdivision in each agricultural land easement deed by including provisions to prohibit subdivision of the easement area entirely or limit the subdivision of the easement area.

(2) In general, the agricultural land easement deed should prohibit future subdivision of the protected property. If the landowner intends to subdivide a parcel in the future, individual applications should be submitted for the individual intended subdivided parcels and ranking conducted on the individual applications. If the smaller parcels are individually eligible and rank high enough to be selected for funding, separate agricultural land easements may be purchased on the individual parcels.

(3) If the eligible entity includes provisions to prohibit subdivision of the easement area entirely, the provision may include an exception to address State or local regulations that explicitly require subdivision to construct residences for employees working on the agricultural land easement area.

(4) If the eligible entity instead of prohibiting future subdivision of the protected property wants to provide for the future subdivision of the protected property, then the agricultural land easement deed must identify the maximum number of future parcels, the terms required for the future conveyance of approved parcels, and identify the boundaries of the proposed subdivisions as follows—

(i) If Identified Prior to Closing.—Prior to closing, the eligible entity must provide NRCS a map of the proposed subdivision of the protected property. The individual parcels resulting from the proposed subdivision of the protected property must each meet the ACEP-ALE land eligibility requirements and

program purposes, as determined by NRCS. Both the approved number and boundaries of the proposed subdivided parcels as approved by the State conservationist prior to closing must be identified in the agricultural land easement deed. No further NRCS review is required at the time of future conveyance of the parcels as identified in the deed.

(ii) If Identified After Closing.—The eligible entity must submit a request to the State conservationist for approval prior to authorizing a subdivision. The eligible entity must certify that the requested subdivision is required to keep all resulting farm or ranch parcels in production and viable for agricultural use. The State conservationist must determine that—

- Parcels resulting from the subdivision of the protected property will meet ACEP land eligibility requirements of 16 U.S.C. Section 3865 et seq. as enacted on the date the original parcel was enrolled in ACEP, including the allocation of the impervious surface limitation between the subdivided parcels.
- The resulting parcels will not be below the median size of farms in the county or parish as determined by USDA's most recent National Agricultural Statistical Survey (NASS).

I. Surface and Subsurface Mineral Exploration and Extraction

The agricultural land easement deed must prohibit exploration and extraction of surface and subsurface minerals unless the required provisions for such exploration and extraction are included in the agricultural land easement deed as follows:

(i) The eligible entity may include deed terms that allow limited mining activities for materials used to facilitate the agricultural operations on the easement area, provided the extraction is limited, localized, occurs on a small area, does not harm the purposes of the agricultural land easement, and is approved in advance by the eligible entity.

(ii) The eligible entity may elect to allow subsurface mineral extraction to occur on the easement area in accordance with applicable State law if the agricultural land easement deed includes the following terms:

- For ALE-agreements executed under the 2014 Farm Bill, the language included in those agreements at the time of execution, including the attached minimum deed terms for ACEP-ALE cooperative agreements, subject to updates or amendments to such language as authorized for 2014 Farm Bill enrollments, must be included in all agricultural land easements deeds acquired under such agreements.
- For ALE-agreements executed under the 2018 Farm Bill, the standard subsurface mineral development language provided by NRCS in the executed ALE-agreements, must be included in the agricultural land easement deeds of all agricultural land easements acquired under such agreements. These provisions allow for the subsurface mineral development on the easement area if approved by the eligible entity and NRCS, and require the eligible entity and the landowner to demonstrate prior to the initiation of mineral development activity that such subsurface mineral development, as determined by the eligible entity and NRCS, shall—
  - Be conducted in accordance with applicable State law.
  - Have a limited and localized impact.
  - Not harm the agricultural use and conservation values of the land subject to the easement.

- Not materially alter or affect the existing topography, as determined by the eligible entity and the NRCS.
- Comply with a subsurface mineral development plan for the remediation of impacts to the agricultural use and conservation values of the easement area, which includes reclaiming and restoring all areas on the easement that are impacted by the subsurface mineral development and such plan is approved by the eligible entity and NRCS prior to the initiation of mineral development activity.
- Not be accomplished by any surface mining method.
- Be within the impervious surface limits described in the agricultural land easement deed.
- Use practices and technologies that minimize the duration and intensity of impacts to the agricultural use and conservation values of the agricultural land easement.
- Additionally, all areas of the protected property impacted by subsurface mineral development must be reclaimed and restored within a reasonable time, as determined by the eligible entity and NRCS, at cessation of subsurface mineral development activities.

J. Agricultural Land Easement Deed Recording and Signature

(1) The agricultural land easement deed must meet the requirements of the State and county recording statutes where the agricultural land easement deed will be recorded.

(2) The holder of the agricultural land easement must accept the agricultural land easement deed. Acceptance is indicated by an authorized official of the holder signing the agricultural land easement deed on an acceptance page.

(3) The United States is not a grantee but holds certain limited rights in the agricultural land easement. Acceptance by the holder of the agricultural land easement will give rise to the rights of the United States set forth in its right of enforcement in the agricultural land easement.

(4) The United States is not required to sign the ACEP-ALE funded agricultural land easement deed to give rise to the United States right of enforcement. No representative of USDA will sign the ACEP-ALE funded agricultural land easement deed or other acceptance document unless signature by a third-party right-of-enforcement holder is required by State law and such requirement has been verified by OGC. If State law requires such acceptance, States must obtain EPD review and approval of the acceptance document prior to closing and the acceptance document may only be signed by the State conservationist.

Note: Due to implementation of ACEP-ALE in fiscal year (FY) 2014 under the existing FRPP regulations, the agricultural land easement deeds funded through ALE-agreements executed in FY 2014 must be signed by NRCS.

528.61 Guidelines for Agricultural Land Easement Deed Review

A. NRCS Review of Agricultural Land Easement Deeds

(1) Although an eligible entity may use its own terms and conditions in the agricultural land easement deed, there are certain provisions that must be included in the agricultural land easement deed to address the regulatory deed requirements and ensure the deed terms are consistent with the purposes of ACEP-ALE. These provisions are addressed in the "Minimum Terms for the Protection of Agricultural Use," which NRCS has established in the "ALE Minimum Deed Terms" addendum

(see subpart U of this part for the "ALE Minimum Deed Terms" addendums). The ALE Minimum Deed Terms addendum is a standard exhibit to the ACEP-ALE cooperative agreement and to the ACEP-ALE program agreement where authorized and when used with noncertified eligible entities. The ALE Minimum Deed Terms addendum must be used as described in this section by all eligible entities for all easements acquired under such agreements.

Note: Subpart H of this part, provides the development and review requirements for agricultural land easement deeds used by eligible entities that have been certified and have entered into an ACEP-ALE grant agreement, or where authorized, an ACEP-ALE program agreement, that includes the agreement terms specific to certified eligible entities.

(2) The eligible entity may introduce its own deed terms, including those that are consistent with but more restrictive than the ALE minimum deed terms. The ALE minimum deed terms addendum identifies the terms that will prevail in the event of a conflict between the eligible entity's own deed terms and the ALE minimum deed terms. The ALE minimum deed terms themselves may not be modified except for appropriate changes to address drafting needs and formatting requirements.

(3) Use of standardized ALE minimum deed terms will expedite NRCS review of agricultural land easements, streamline program delivery, increase the transparency of program requirements, ensure the equitable treatment of all participants, and reduce inconsistency in the long-term management and enforcement of the easements.

(4) All agricultural land easement deeds must be provided by the eligible entity to NRCS 90 days prior to the planned closing date and must be approved by NRCS prior to closing. The level of NRCS review and type of approval required for individual easement deeds prior to closing is based on how the eligible entity elects to incorporate the ALE minimum deed terms as follows:

(i) If an eligible entity elects to attach the "ALE Minimum Deed Terms" addendum to the deed, review by EPD is not required; instead, review will be conducted by the State conservationist or as applicable, the Easement Acquisition Branch (EAB) team, who will verify that the—

- Terms of the addendum are not modified.
- Addendum is signed by the landowner and eligible entity and attached to the agricultural land easements deed at the time of closing and recordation.
- Appropriate drafting instructions were followed, and optional deed term selections were made to reflect the land eligibility of the parcel.
- Paragraph below is inserted at the bottom of the agricultural land easement deed:

This **[INSERT DEFINED TERM FOR AGRICULTURAL LAND EASEMENT]** is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (ACEP). The EXHIBIT ____ is attached hereto and incorporated herein by reference and will run with the land **[SELECT ONE:** *in perpetuity* **OR** *for the maximum duration allowed under applicable State laws*]. As required by 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468, and as a condition of receiving ACEP funds, all present and future use of the Protected Property identified in EXHIBIT ____ (legal description or survey) is and will remain subject to the terms and conditions described in EXHIBIT_____ entitled "Minimum Deed Terms For The Protection Of Agricultural Use", that is appended to and made a part of this easement deed.

(ii) If the eligible entity elects not to attach the "ALE Minimum Deed Terms" addendum to the agricultural land easement deed, then the eligible entity will ensure that ALE minimum deed terms as written in the "ALE Minimum Deed Terms" addendum are incorporated into the body of the agricultural land easement deed. The agricultural land easement deed must be reviewed and approved for use by EPD prior to the eligible entity requesting an advance of the Federal share or closing on an agricultural land easement.

(iii) An eligible entity may request and be authorized by NRCS to use an entity-specific ALE deed template, provided the template is determined by NRCS to address all of the regulatory deed requirements, is approved by EPD director, and following such EPD director approval is attached to the ACEP-ALE cooperative agreement or where authorized, ACEP-ALE program agreement, at the time of the original execution of the ALE-agreement or through a subsequent amendment or modification thereto, as follows:

- Eligible entities seeking approval of an entity-specific ALE deed template must review the regulatory deed requirements and the ALE minimum deed terms. Entities should notify the State conservationist whether they will request an entity-specific ALE deed template as early in the process as possible, preferably prior to ranking. Such entities are likewise encouraged to submit the proposed entity-specific ALE deed template as early in the process as possible, preferably in the fiscal year prior to submitting an application and whenever possible prior to entering into the ALE-agreement.
- The entity will draft a proposed entity-specific ALE deed template addressing all of the regulatory deed requirements, incorporating the required United States right of enforcement language without alteration, and to the greatest extent practicable incorporating the ALE minimum deed terms as written. The entity will identify in their request for approval the specific terms within the proposed entity-specific ALE deed template that meet the regulatory deed requirements by citation and where applicable the ALE minimum deed terms.
- Eligible entities will submit the proposed entity-specific ALE deed template to NRCS.
- The State conservationist or, as applicable, the EAB team will review the proposed entity-specific ALE deed template for conformance with program requirements and submit the template to EPD director for review.
- The EPD director will review the proposed entity-specific ALE deed template and then approve, reject, or approve with required changes.
- The EPD director decision will be communicated in writing to the eligible entity, the State conservationist and as applicable, the EAB Team. Only after written approval is received may ALE-agreements, including amendments or modifications thereto, that authorize the use of the EPD-approved entity-specific ALE deed template be executed by NRCS.
- Eligible entities with an EPD-approved entity-specific ALE deed template must use the language of the template as approved, and if further changes are made to an already approved template, the deed must be resubmitted for EPD director approval and will be treated as an individual deed for review.
- If the eligible entity uses the EPD-approved entity-specific ALE deed template without changing any terms or conditions, review of the individual, final agricultural land easement deeds by EPD is not required; instead, the State conservationist or, as applicable, the EAB Team will review and verify

that the individual, final agricultural land easement deed is the same as the EPD-approved template. Verification by the State conservationist or, as applicable, the EAB team must be completed prior to the eligible entity requesting an advance of the Federal share or closing on the easement.

- If an entity is provided ranking points for having an EPD-approved entity-specific ALE deed template, that template must have EPD approval in the fiscal year prior to providing such ranking points to an individual parcel for which the template will be used to acquire the ACEP-ALE.

(5) State conservationists, in consultation with the State technical committee, may propose additional minimum deed terms that are State-specific to address actual, local concerns that are not adequately encompassed by the standard set of minimum deed terms provided in the nationally available "Minimum Deed Terms" addendum. The proposed State-specific terms cannot modify any of the standard ALE minimum deed terms but may be State-specific terms that are in addition to the nationally required minimum deed terms. The proposed State-specific terms must be submitted by the State conservationist to the EPD director for review and approval. EPD-approved State-specific terms would then be used uniformly throughout the State as the standard "State-specific ALE Minimum Deed Terms" addendum for that State. Submissions for additional State-specific minimum deed terms must occur in the fiscal year prior to the fiscal year of their proposed use to ensure adequate time for review and approval. Prior to their use, the approved State-specific minimum deed terms must be included as an attachment to the ACEP-ALE cooperative agreement or where authorized, the ACEP-ALE program agreement, either at the time of the original execution of the ALE-agreement or through a subsequent amendment or modification thereto.

(6) NRCS will conduct quality assurance reviews on the agricultural land easements acquired by the eligible entity. If the final deeds contain modifications to the ALE minimum deed terms, or EPD-approved entity-specific ALE deed templates, NRCS may require the deeds to be remedied and may terminate the ALE-agreement.

528.62 Title Review and Clearance

A. Title Review Requirements

(1) Prior to purchasing an agricultural land easement, onsite inspections, due diligence, and landowner interviews must be completed and all title evidence must be reviewed to ensure that programmatically and legally sufficient title in the property is obtained. These reviews will include a thorough examination of both unrecorded and recorded exceptions to the title to determine whether any existing exceptions to the title, encumbrances, agreements, leases, easements, other clouds on the title, or other circumstances exist that would in any way undermine NRCS's ability to achieve the purposes of the program or the eligible entities ability to enforce the easement.

(i) For all ACEP-ALE cooperative agreements, and where authorized, ACEP-ALE programs agreements with noncertified eligible entities, the review and documentation will be completed by the eligible entity and NRCS, and issues must be remedied by the landowner and the eligible entity prior to closing the easement.

(ii) For ACEP-ALE grant agreements with certified eligible entities and where authorized, ACEP-ALE program agreements with certified eligible entities, the review and documentation will be completed by the eligible entity, and issues must be remedied by the landowner and the eligible entity prior to closing the

easement. Documentation submitted to NRCS will be reviewed for compliance after the easement is acquired. Any noncompliance issues identified by NRCS must be remedied by the landowner and the eligible entity.

(2) The eligible entity will obtain and review a title commitment, preliminary title report, or other form of preliminary title evidence along with all underlying documents for each parcel selected for funding and provide copies to NRCS. The eligible entity will evaluate the title, including all outstanding and reserved interests in the parcel. The eligible entity must inform NRCS of any potential impacts those recorded and unrecorded interests may have on the agricultural land easement deed's ability to protect the agricultural uses by limiting the nonagricultural uses and for grassland enrollments, also limiting the nongrassland uses of the land.

(3) The eligible entity and NRCS must also consider unrecorded interests in the parcel, such as lease holders, unauthorized occupants or users, or other evidence of interests discovered through landowner interviews and site visits in order to determine and document the presence of unrecorded liens, leases, options, or other claims against the property that may impact the landowner's ability to provide clear title to the property or impact the ability to achieve the purposes of the program on the parcel.

(i) For agricultural land easements acquired pursuant to an ACEP-ALE cooperative agreement, or where authorized an ACEP-ALE program agreement with a noncertified eligible entity, States are required to use form NRCS-LTP-27, "Preliminary Certificate of Inspection and Possession (PCIP)" (or approved successor forms). The "PCIP" form must be completed by NRCS prior to the easement closing.

(ii) For agricultural land easements acquired pursuant to an ACEP-ALE grant agreement, or where authorized an ACEP-ALE program agreement with a certified eligible entity, the terms of the ALE-agreement require the certified eligible entity to identify, consider, document, and address such unrecorded interests.

(4) NRCS will determine whether the recorded and unrecorded exceptions will prevent the easement from achieving the purposes of the program. NRCS will take into consideration the eligible entity's review and findings.

(5) The form NRCS-LTP-23, "Certificate of Use and Consent" (or successor form) must be completed for all parcels selected for funding. Each exception must be fully documented as either acceptable or needing to be removed or subordinated, or other appropriate remedy. Each exception must be documented on the "Certificate of Use and Consent" form and must include a description of the exception, the recommendation for addressing the exception, and the basis for the recommendation (see subpart U of this part for a title exception guide). Below are examples of recommendations, brief descriptions, and rationales that may appear on the "Certificate of Use and Consent" form:

(i) Administratively Acceptable Outstanding Right.— Administratively acceptable outstanding rights would not interfere with agricultural land easements ability to protect the agricultural uses by limiting the nonagricultural uses. Examples of administratively acceptable outstanding rights may include defined rights of way or easements for existing roads and utilities (e.g., electric, gas, sewer, water, or communications). The "Certificate of Use and Consent" documentation may appear as follows:

"Acceptable – Existing 30-foot-wide power line right-of-way on southerly easement boundary, power line located on the perimeter of the field, no long-

term negative impacts anticipated to result from presence or maintenance of power line."

(ii) Administratively Waived Outstanding Right.—Administratively waived outstanding rights include third-party rights where a diligent effort was made to acquire the outstanding right without success, there is a low risk that the third-party rights will be exercised, and the impact on the agricultural value would be acceptable if exercised. All efforts to acquire the rights and the rationale for determining that the probability is low for the third-party to exercise those rights must be documented in writing. In these situations, the State conservationist may approve the funding of the easement subject to these outstanding rights. Examples of administratively waivable outstanding rights include—

- Mineral rights held by third parties and approved by the State conservationist using the mineral rights matrix located in 440-CPM, Part 527, Subpart Y, "Exhibits."
- Alternative legal access approved by the State conservationist in accordance with paragraph B below that is an alternative to being an insurable, unconditional, or transferable legal right of recorded access for the term of the easement.
- The certificate of use and consent documentation may appear as follows:

"Acceptable – Existing natural gas lease held by more than 50 parties due to multiple generations of inheritance of rights, located in an area with no known reserves and no infrastructure for transport; mineral assessment has determined very low likelihood of future exploration or extraction, no long-term negative impacts anticipated to result from presence or maintenance of outstanding gas lease."

(iii) Unacceptable Outstanding Rights.—Administratively unacceptable outstanding rights include, but are not limited to—

- Liens against the property (mortgages, mechanic's liens).
- Right-of-way or easements that prevent the agricultural use of the property.
- Provisions that require the United States to—
  - Commit to future appropriations.
  - Make a payment by a specific date.
- Rights not clearly defined or that might limit the agricultural land easement's ability to protect the agricultural uses by limiting the nonagricultural uses and, for grassland enrollments, to protect the grazing uses and related conservation values by limiting nongrassland uses.
- Rights that could unduly interfere with the agricultural use of the property.
- The certificate of use and consent documentation may appear as follows:
  - Must be subordinated or removed: existing county flowage easement, allows county to subject the land to permanent flooding, levee has been intentionally and accidentally breached numerous times, a permanent breach of the levee is currently being examined and has a high likelihood of approval, permanent flooding of the parcel would preclude future agricultural use.
  - Must be subordinated or removed: mortgages.
  - Must be removed: judgments, mechanics, or tax liens.

Note: For certified eligible entities that have entered into an ACEP-ALE grant agreement or where authorized an ACEP-ALE program agreement, the

certified eligible entity rather than NRCS must complete a certificate of use and consent or a substantively similar document prior to acquisition of the agricultural land easement. Within 30 days of recordation or request for reimbursement, whichever is sooner, the certified eligible entity must provide the NRCS State office a copy of the final recorded agricultural land easement deed, a copy of the final policy of title insurance, and a copy of the completed certificate of use and consent or similar document.

(6) The landowners and eligible entities are responsible for providing clear title to the property, which may require such remedies as—
   (i) Securing a subordination or release of the rights from the third-party owner or lessee of the preexisting rights.
   (ii) Terminating or cancelling leases or options.
   (iii) Prior to acquisition, reconfiguring the boundaries of the parcel to eliminate or reduce to a minimal extent the surface impact the full exercise of the rights will have on the parcel. If the acreage of the parcel changes by more than 10 percent, it must be reranked and may need an updated appraisal in accordance with 440-CPM, Part 527, Subpart E, Section 527.47. The reconfigured parcel may not be funded if the ranking score of the reconfigured parcel is below the lowest scoring parcel funded in the applicable funding pool for that fiscal year.

(7) The eligible entity must provide NRCS with documentation that all unacceptable exceptions have been remedied. For ACEP-ALE cooperative agreements and where authorized, ACEP-ALE program agreements with noncertified eligible entities, this documentation must be provided to NRCS 30 days prior to the planned closing date for reimbursements and 60 days prior to the planned closing date for advances (see subpart I of this part). The State conservationist may not disburse funds or approve the closing of an agricultural land easement if the there are any unacceptable outstanding rights to the parcel. For certified eligible entities acquiring easements under an ACEP-ALE grant agreement or where authorized an ACEP-ALE program agreement, this documentation must be provided upon request and issues identified by NRCS must be remedied in accordance with NRCS instructions and the terms of the agreement.

B. Access to Agricultural Land Easements

(1) Agricultural land easements must have sufficient access as described in this part to be eligible to receive and retain ACEP-ALE cost-share assistance.

(2) The landowner and eligible entity are responsible to ensure sufficient access to the easement area and provide evidence of access to NRCS. The State conservationist is responsible to determine if the provided access is physically and legally sufficient to allow ingress and egress to the easement area in the event that NRCS has to exercise the United States' right of enforcement.

(3) Sufficient access requires NRCS to have both physical and legal access to the easement area (also referred to as the parcel) to be able to exercise the rights it obtains under the agricultural land easement purchased by the eligible entity.
   (i) Physical access is sufficient if NRCS can reliably, safely, and efficiently conduct onsite visual and physical inspections of the parcel to monitor compliance with the terms of the agricultural land easement and as applicable, the agricultural land easement plan (including any component plans such as an HEL conservation plan on highly erodible cropland, grazing plan on grassland, or forest management plan on forest land) throughout the term of the easement.

(ii) Legal access is sufficient if the access offered by the landowner and the eligible entity is an insurable, unconditional, and transferable legal right of recorded access for the term of the easement.

(iii) If the State conservationist determines that the identified access does not satisfy the legal access requirements described in subparagraph (ii) above, then they may consider alternative legal access as described in subparagraph (iv) below across lands owned by the United States (Federal lands), such as lands managed by the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service, or the U.S. Forest Service (USFS), subject to the following conditions:

The landowner and eligible entity must provide documentation to the State conservationist that it is not practicable to acquire legal access as described in subparagraph (ii) to the easement area. Such documentation may include—

- A map showing that the parcel is landlocked by adjacent lands owned by the United States.
- If the parcel is adjacent to but not landlocked by lands of the United States, written evidence that the landowner has made an attempt to acquire access across adjacent non-Federal lands. The landowner and eligible entity agree to include assurance in the agricultural land easement deed that access will continue to be provided and maintained comparable to the current access for the duration of the easement.

(iv) Alternative legal access is sufficient when the landowner can provide proof of any of the following access rights that provide a link from a public roadway or other legal access point to the easement area:

- Use of roads owned and maintained by the United States and managed by Federal agencies such as the BLM and USFS (this may include numbered system roads)
- Use of rights of way authorized under the Federal Land Management Policy Act (FLPMA) of 1976
- Use of reciprocal rights of way between the landowner and a Federal agency
- Long-term access permits issued by a Federal agency, 30 years or greater in length, that may be renewed upon agreement of the landowner and the Federal agency
- A letter from an authorized representative of a Federal agency establishing the landowner's permission to cross the Federal land for casual use

(v) The eligible entity must provide documentation to NRCS that the land meets the above criteria for alternative legal access.

(vi) The "Certificate of Use and Consent" must be used to document in the file that the access to the parcel has been administratively considered and whether or not it has been found to be sufficient. If alternative legal access is used, it must be documented on the "Certificate of Use and Consent," signed by the State conservationist and retained in the individual easement case file.

C. Title Insurance Requirements

(1) When securing title insurance, at a minimum, the eligible entity must—

(i) Acquire American Land Title Association (ALTA) title insurance on a standard ALTA owner's policy for each acquisition for at least the full amount of the agricultural land easement purchase price.

(ii) Provide NRCS with a copy of the title insurance commitment and all supporting documents per the specific terms of the ALE-agreement.

- The title commitment must be free and clear of any and all outstanding rights or encumbrances on the title except those that NRCS determines are administratively acceptable or waivable.
- If any such encumbrances are acceptable or waivable, they must be listed on the certificate of use and consent. Any encumbrances that are not acceptable must be removed or subordinated to the provisions of the agricultural land easement deed.
- Except for approved alternative legal access in accordance with paragraph B(3) above, the title commitment must insure access.

(iii) Ensure the title insurance company is approved by the State insurance commissioner or its equivalent.

(2) If an eligible entity fails to meet these minimum requirements, NRCS may terminate funding.

528.63 The Agricultural Land Easement Plan

A. Applicability

(1) 2014 Farm Bill Enrollments

ALE-agreements originally executed under the 2014 Farm Bill remain subject to the authorities and requirements of the statute and regulations in place at the time of enrollment. Therefore, all agricultural land easement deeds for parcels funded through ALE-agreements executed under the 2014 Farm Bill must continue to include the terms that identify that the agricultural land easement is subject to the agricultural land easement plan. Additionally, the development and approval of an agricultural land easement plan and any required component plans must be completed in accordance with paragraph B below.

(2) 2018 Farm Bill Enrollments

Agricultural land easements acquired pursuant to ALE-agreements executed under the 2018 Farm Bill must have an HEL conservation plan for any portion of a parcel that contains highly erodible cropland, and the agricultural land easement deed must include terms that ensure compliance with the HEL conservation plan that will be developed and managed in accordance with the Food Security Act of 1985, as amended, and its associated regulations. Additionally, an eligible entity may elect to develop a comprehensive agricultural land easement plan and include language in the agricultural land easement deed requiring the development and maintenance of such agricultural land easement plan as a condition of selection and funding. The development and approval of a required HEL conservation plan on highly erodible cropland or an agreed-to agricultural land easement plan must be completed in accordance with paragraph C below.

B. 2014 Farm Bill Enrollments: Agricultural Land Easement Plan Development and Approval Requirements

(1) All ACEP-ALE easements must be subject to an agricultural land easement plan (ALEP) and may also require component plans to address specific land uses or resource concerns on the parcel. At a minimum, all ALEPs must—

(i) Describe the activities that promote the long-term viability of the land to meet the purposes for which the easement was acquired. This may include a farm or ranch succession plan.

(ii) Include a description of the farm or ranch management system, and, if applicable, irrigation water right volumes needed for the agricultural activity on the easement. The ALEP may incorporate or refer to information from baseline documentation reports, as appropriate.

(iii) Identify required and recommended conservation or management practices that address the purposes and resource concerns for which the parcel was selected, such as those identified on the ALE ranking sheet, the land eligibility determinations, waiver requests, the ALE-agreement or deed, or other project documents. The ALEP may incorporate or cross-reference practices identified in other plans, such as an organic systems plan for organic operations, a comprehensive nutrient management plan for animal feeding operations, or care of historic sites for easements with historical or archaeological resources.

(iv) Identify additional or specific criteria associated with permissible and prohibited activities consistent with the terms of the deed. For example, if a deed specifies that the location of the building envelope may be adjusted if it does not adversely affect the agricultural resources, the ALEP should describe the agricultural resources and how they may be impacted by construction of structures. Not every ALEP will need to specify additional or specific criteria for deed terms; whether such criteria are required should be determined by NRCS based on the agricultural resources present on the property and the clarity of the deed restrictions.

(v) Establish a limit on the impervious surfaces to be allowed consistent with the farm or ranch management system and consistent with the limitations identified in the deed.

(vi) If the parcel includes grassland, highly erodible cropland, or forest land, a component plan must be incorporated by reference into the ALEP. Conservation or management practices or activities included in an attached component plan do not need to be identified separately in the ALEP. Component plans must be developed for each land use type present on the parcel, as follows:

- A grasslands management plan is required if the parcel meets the land eligibility criteria in subpart D, section 528.33B(3) of this part, or if the parcel includes one of the eligible land uses identified in subpart D, section 528.33C(1)(ii)-(v) of this part. An ACEP-ALE grasslands management plan must meet the requirements identified in paragraph (7) below.
- An HEL conservation plan is required if the parcel contains highly erodible cropland. Additionally, where appropriate, the HEL conservation plan may include conversion of highly erodible cropland to less intensive uses. An ACEP-ALE HEL conservation plan must meet the requirements in paragraph (8) below. NRCS or an NRCS-certified planner is responsible for assisting with the development of an HEL conservation plan.
- A forest management plan is required if the parcel contains contiguous forest that exceeds the greater of 40 acres or 20 percent of the total easement area. A forest management plan must meet the requirements in paragraph (9) below.

(2) The eligible entity is responsible for providing the ALEP and any required component plans to NRCS for the agency's review and approval. The eligible entity may elect to have NRCS or a qualified third party develop the required plans. State conservationists must ensure the plans address the minimum criteria identified in this part, whether the ALEP is developed by NRCS or a third party.

(3) If the eligible entity requests NRCS to develop the ALEP, this should be identified in the ALE-agreement. NRCS development of the ALEP is at no cost to the eligible

entity. If NRCS develops the ALEP, it will be done so in consultation with the eligible entity and the landowner and in accordance with Title 180, National Planning Procedures Handbook (NPPH), Part 600, and the NRCS Field Office Technical Guide (FOTG). As part of the NRCS planning process, NRCS will complete the environmental evaluation (Form NRCS-CPA-52, "Environmental Evaluation Worksheet") and the associated documentation needed to comply with National Environmental Policy Act (NEPA) requirements. State conservationists must work with the entity to ensure NRCS planning assistance is requested and occurs with sufficient time to allow NRCS to complete the ALEP and the associated environmental evaluations and for the entity and landowner to review and sign the plan prior to easement closing.

Note: The ALEP does not have to be a resource management system (RMS)-level plan. The landowner or eligible entity may request an RMS-level plan, or an RMS-level plan may be required as a condition of funding if the parcel was ranked and selected or identified as a project of special significance based on the landowner and eligible entity agreement that the ALE would have an RMS-level plan.

(4) If the eligible entity develops the ALEP, including a third party selected by the eligible entity, it is at the eligible entity's own expense. NRCS review and approval of the entity-developed ALEP is based on a determination that the ALEP meets the ACEP-ALE program requirements outlined in this section. An environmental evaluation form (NRCS-CPA-52) is not required for an entity-developed ALEP. The timing of the NRCS review and approval of the ALEP is as follows:
   (i) For ACEP-ALE cooperative agreements, the ALEP must be approved by NRCS and signed by the landowner and the eligible entity prior to easement closing.
   (ii) For ACEP-ALE grant agreements with certified eligible entities, the ALEP must be signed by the landowner and the eligible entity prior to easement closing. NRCS review of the ALEP will occur after acquisition in accordance with the terms of the grant agreement and as part of the quality assurance review process. The eligible entity may request NRCS review and approval of the ALEP prior to closing. For easements requiring an HEL conservation plan component as described in paragraph (8) below, NRCS must approve the HEL conservation plan component prior to closing.

(5) The ALE plan is a living document that may be adjusted as ownership or landowner operations or objectives change and is intended to provide flexibility for management of the land within the purposes of the easement over the term of the easement. All revisions and updates to the ALE plan must be approved by the landowner, the grantee, and NRCS.

(6) The eligible entity is responsible to ensure compliance with any required provisions of the agricultural land easement plan.

(7) Grasslands Management Plan Component Requirements.—The grasslands management plan must describe the grassland types on the easement area and the management systems and practices needed to conserve, protect, and enhance the viability and functions and values of those grasslands. The functions and values of grasslands are the ecosystem services provided, including but not limited to domestic animal productivity, biological productivity, plant and animal richness and diversity, fish and wildlife habitat (including habitat for pollinators and native insects), water quality and quantity benefits, aesthetics, open space, and recreation.
   (i) The grasslands management plan must include—

- A baseline description of the grassland resource, to include the species components of the grassland, such as an ecological site description or, at minimum, a brief description of the grassland species composition.
- A description of the grassland management system consistent with NRCS practices contained in the FOTG, including the prescribed grazing standard for easements that will be managed using grazing.
- The management of the grassland for grassland-dependent birds, animals, water quality and quantity benefits, or other resource concerns for which the easement was enrolled.
- The nesting seasons of any grassland-dependent birds whose populations are in significant decline and the associated limitations on timing and location of any haying, mowing, or seed harvest activities.
- The permissible and prohibited activities.
- Any associated restoration plan or conservation plan (not limited to HEL conservation plans).

(ii) The grasslands management plan may be updated and amended as necessary to include management changes for protection of grassland resources as needed. Changes to the grasslands management plan must be consistent with ACEP policy and maintaining the grassland resources.

(iii) At a minimum, the grasslands management plan must be reviewed during the annual monitoring of the easement by the eligible entity to determine if the current grassland management is consistent with the plan and the changes to the plan are needed.

(8) HEL Conservation Plan Component Requirements.—Where highly erodible croplands are included in the enrollment, an HEL conservation plan component of the agricultural land easement plan will be developed by NRCS or an NRCS-certified planner in accordance with the provisions outlined in Title 180, National Food Security Act Manual (NFSAM), and 180-NPPH. The eligible entity has the option to request NRCS assistance in developing only the HEL conservation plan component for inclusion in an ALEP that is otherwise developed by the eligible entity.

Note: At the time of application, every parcel landowner must file a Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification," at the local USDA service center. By signing the Form AD-1026, each landowner certifies that they are in compliance with HEL and wetland conservation (WC) provisions on all farms or ranches in which the landowner has an interest. The Form AD-1026 gives NRCS authorization to enter upon and inspect the property for the purpose of confirming HEL and WC compliance.

NRCS must confirm all landowner HEL/WC eligibility requirements are met at the time of obligation and again prior to payment.

(i) The HEL conservation plan may require conversion of highly erodible cropland to less intensive uses. All such plans must be reviewed and approved by NRCS and signed by the landowner and the eligible entity prior to closing. Implementation of any provisions required under the HEL conservation plan must occur within 1 year unless the State conservationist grants an extension due to conditions beyond the landowner's control.

(ii) The HEL conservation plan is considered up-to-date as long as there are no changes to the agricultural operations on the parcel and no changes in ownership of the parcel. If there are changes to the agricultural operations on the parcel or ownership of the parcel, the HEL conservation plan must be updated. The

eligible entity and landowner must obtain an updated HEL conservation plan from NRCS or an NRCS-certified planner in the event of such changes.

(iii) The eligible entity must report any changes in the agricultural operation or parcel ownership from the previous year on its annual monitoring report. If a change in operations or ownership is reported, the eligible entity must instruct the landowner to schedule an appointment with NRCS or NRCS-certified planner to have the HEL conservation plan updated within 12 months. If at the time of the next annual monitoring report the landowner has not obtained an updated HEL conservation plan (and it is not due to inaction by NRCS), then the landowner is in violation of the provisions of the agricultural land easement and the eligible entity is responsible to bring the landowner into compliance.

(iv) NRCS will monitor the status of the HEL conservation plan in accordance with HEL/WC status review requirements. Prior to entering the protected property, NRCS will notify the landowner in accordance with 180-NFSAM procedures.

(v) A violation of the HEL conservation plan will be considered a violation of the agricultural land easement, once all appeal rights have been exhausted. (See subpart J, section 528.92 of this part, for violation procedures.)

(9) Forest Management Plan Component Requirements.—A forest management plan component is necessary if the ACEP-ALE enrollment contains contiguous forest that exceeds the greater of 40 acres or 20 percent of the easement area. Therefore, a forest management plan is required when the area of contiguous forest exceeds both 40 acres and 20 percent of the easement area. A forest management plan is not required if the contiguous forest area is less than 40 acres or if the contiguous forest is greater than 40 acres but is less than 20 percent of the easement area.

(i) The forest management plan component describes the management system and practices to conserve, protect, and enhance the viability of the forest land. A forest management plan component contains a brief description of the forest land with a map identifying the forest land area.

(ii) The forest management plan component must provide a description of how the forest contributes to the economic viability or how the forestland serves as a buffer to protect from development along with the any management components needed to maintain the economic viability or buffer status.

(iii) Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. Section 2103a), another practice plan approved by the State forester, or another plan determined appropriate by NRCS. The plan complies with applicable Federal, State, Tribal, and local laws, regulations, and permit requirements. The forest management plan will also include any reference to current private, industry, State, or local forest management plans that the enrolled forest area is currently under. A copy of the referenced plans may be included if available.

(iv) At a minimum, the forest land management plan must be reviewed during the annual monitoring of the easement by the eligible entity to determine if the current forest land management is consistent with the plan and the changes to the plan are needed.

C. 2018 Farm Bill Enrollments: Agricultural Land Easement Plan Development and Approval Requirements

(1) An ALEP may be comprised of a general agricultural land easement plan, a grassland management plan, a forest land management plan, an HEL conservation plan, or any combination thereof. An HEL conservation plan is required on those portions of a parcel that contain highly erodible cropland. If the parcel does not contain highly

erodible cropland, the development of an ALEP that includes a general agricultural land easement plan, a grassland management plan, or a forest land management plan is not required unless agreed to by the eligible entity.

(2) If the eligible entity agrees to develop an ALEP that include a general agricultural land easement plan, a grassland management plan or a forestland management plan, the eligible entity is responsible for the development and maintenance of such plans. If the ALEP includes an HEL conservation plan, NRCS or an NRCS-certified planner is responsible for the development and maintenance of the HEL conservation plan which must meet the requirements in paragraph (4) below.

(3) States may include considerations for the development and maintenance of an ALEP (not including HEL conservation plans) as part of the State ranking criteria (see subpart E, section 528.41C of this part). Parcels selected for funding that were awarded ranking points based on the eligible entity's agreement to develop and maintain an ALEP must have a general agricultural land easement plan, a grassland management plan, a forest land management plan, or any combination thereof that meets the requirements in paragraph (5) below.

Note: Parcels enrolled as grasslands of special environmental significance under ALE-agreements originally executed in FY 2019 must have a grassland management plan, developed by the eligible entity, that meets the requirements of paragraph (6) below.

(4) HEL Conservation Plan Requirements for Highly Erodible Cropland.—An HEL conservation plan is required on those portions of a parcel that contain highly erodible cropland as follows:

(i) At the time of application, every parcel landowner must file a Form AD-1026, "Highly Erodible Land and Wetland Conservation Certification," at the local USDA service center. By signing the Form AD-1026, each landowner certifies that they are in compliance with HEL and WC provisions on all farms or ranches in which the landowner has an interest. The Form AD-1026 gives NRCS authorization to enter upon and inspect the property for the purpose of confirming HEL and WC compliance.

Note: NRCS must confirm all landowner HEL/WC eligibility requirements are met at the time of obligation and again prior to payment.

(ii) Where highly erodible cropland is included in the enrollment, an HEL conservation plan will be developed by NRCS or an NRCS-certified planner in accordance with the provisions outlined in 7 CFR Part 12, 180-NFSAM, and 180-NPPH. If the eligible entity does not elect to develop a more comprehensive ALEP as described in this section, the HEL conservation plan may comprise the entirety of the ALEP on such parcel.

(iii) The HEL conservation plan must be reviewed and approved by NRCS and signed by the landowner and the eligible entity prior to closing. Implementation of any provisions required under the HEL conservation plan must occur within 1 year unless the State conservationist grants an extension due to conditions beyond the landowner's control.

(iv) The HEL conservation plan is considered up-to-date as long as there are no changes to the agricultural operations on the parcel and no changes in ownership of the parcel. If there are changes to the agricultural operations on the parcel or ownership of the parcel, the HEL conservation plan must be updated. The eligible entity and landowner must obtain an updated HEL conservation plan from NRCS or an NRCS-certified planner in the event of such changes.

(v) The eligible entity must report any changes in the agricultural operation or parcel ownership from the previous year on its annual monitoring report. If a change in operations or ownership is reported, the eligible entity must instruct the landowner to schedule an appointment with NRCS or NRCS-certified planner to have the HEL conservation plan updated within 12 months. If at the time of the next annual monitoring report the landowner has not obtained an updated HEL conservation plan (and it is not due to inaction by NRCS), then the landowner is in violation of the provisions of the agricultural land easement and the eligible entity is responsible to bring the landowner into compliance.

(vi) NRCS will monitor the status of the HEL conservation plan in accordance with HEL/WC status review requirements. Prior to entering the protected property, NRCS will notify the landowner in accordance with 180-NFSAM procedures.

(vii) A violation of the HEL conservation plan will be considered a violation of the agricultural land easement, once all appeal rights have been exhausted. (See subpart J, section 528.92 of this part for violation procedures.)

(5) Entity-Developed Agricultural Land Easement Plan Considerations and Requirements.—For ALEPs that include a general agricultural land easement plan, a grassland management plan, a forest management plan, or any combination thereof, the following requirements apply:

(i) The eligible entity is responsible for the development of the ALEP at its own expense. The eligible entity may develop the plan itself or have a third party develop the plans. Use of NRCS planning procedures at 180-NPPH-600, or NRCS FOTG is recommended but not required.

Note: For 2018 Farm Bill enrollments, NRCS may not provide technical assistance through ACEP for the development of an ALEP, except for HEL conservation plans as described in paragraph (4) above. NRCS may provide direct conservation technical assistance (CTA) as requested by landowners and based on State CTA planning allocations and priorities. Any plans developed for landowners by NRCS using CTA are separate from ACEP-ALE plans, will be developed in accordance with NRCS planning procedures, and may not be used to satisfy the requirement for the development of an ALEP as agreed to by the eligible entity.

(ii) The ALEP must be reviewed and signed by the eligible entity and the landowner prior to closing and must be submitted to NRCS as part of the payment request package per the terms of the ALE-agreement. For parcels requiring an HEL conservation plan as described in paragraph (4) above, NRCS must approve the HEL conservation plan prior to closing. With the exception of HEL conservation plans, NRCS review of an entity-developed ALEP is not required prior to closing. The eligible entity may request NRCS review of the entity-developed ALEP which States may review as technical resources allow, provided the draft ALEP is submitted to NRCS at least 90 days before the planned closing date or as otherwise specified in the ALE-agreement. NRCS review of the entity-developed ALEP is limited to a determination that the plans address the minimum criteria outlined in this section.

Note: For ACEP-ALE grant agreements, or where authorized, ACEP-ALE program agreements, with certified eligible entities, NRCS may review the entity-developed ALEP acquisition after closing as part of the quality assurance review process.

(iii) If the development and maintenance of an ALEP has been agreed to by the eligible entity or must occur as required for highly erodible cropland, the agricultural land easement deed must include a provision requiring the ALEP to be prepared and updated in the event the agricultural uses or ownership of the protected property change. The eligible entity is responsible to ensure compliance with any required provisions of the ALEP.

(iv) An ALEP is a living document that may be adjusted as ownership or landowner operations or objectives change and is intended to provide flexibility for management of the land within the purposes of the easement over the term of the easement. All revisions and updates to the ALEP must be approved by the landowner and the grantee.

(v) The ALEP may include a general agricultural land easement plan and may also include component plans to address specific land uses or resource concerns on the parcel. At a minimum, all ALEPs should—

- Describe the activities that promote the long-term viability of the land to meet the purposes for which the easement was acquired. This may include a farm or ranch succession plan.
- Include a description of the farm or ranch management system, and, if applicable, irrigation water right volumes needed for the agricultural activity on the easement. The ALEP may incorporate or refer to information from baseline documentation reports, as appropriate.
- Identify recommended conservation or management practices that may be implemented to address the purposes and resource concerns for which the parcel was selected, such as those identified during the land eligibility determinations or ranking, or in the baselined documentation report, the ALE-agreement, the conservation easement deed, or other supporting documents. The ALEP may incorporate, or cross-reference practices identified in other plans, such as an organic systems plan for organic operations, a comprehensive nutrient management plan for animal feeding operations, or care of historic sites for easements with historical or archaeological resources.
- Identify additional or specific criteria associated with permissible and prohibited activities consistent with the terms of the deed. For example, if a deed specifies that the location of the building envelope may be adjusted if it does not adversely affect the agricultural resources, the ALEP should describe the agricultural resources and how they may be impacted by construction of structures.

(vi) If the parcel includes grassland or forest land, a grasslands management plan or forestland management plan may be developed by the eligible entity and may comprise the ALEP or be incorporated by reference into an ALEP.

- A grasslands management plan may be developed if the parcel meets the land eligibility criteria in subpart D, section 528.33B(3) of this part, or if the parcel includes one of the eligible land uses identified in subpart D, sections 528.33C(1)(ii) through (v) of this part. A grasslands management plan must meet the requirements identified in paragraph (6) below.
- A forest management plan may be developed if the parcel contains forest land as described in subpart D, sections 528.33C(1)(vi) and 528.33C(2) of this part, and must meet the requirements in paragraph (7) below.

(6) Grasslands Management Plan Requirements

(i) The grasslands management plan must describe the grassland types on the easement area, and the management systems and practices that conserve, protect, and enhance the viability and functions and values of those grasslands and as applicable any habitat, species, or sensitive natural resources requirements, permissible and prohibited activities, and any associated restoration plans.

(ii) The functions and values of grasslands are the ecosystem services provided, including but not limited to domestic animal productivity, biological productivity, plant and animal richness and diversity, fish and wildlife habitat (including habitat for pollinators and native insects), water quality and quantity benefits, aesthetics, open space, and recreation.

(iii) A grasslands management plan should also identify the nesting seasons of any grassland-dependent birds whose populations are in significant decline and any associated limitations on timing and location of any haying, mowing, or seed harvest activities.

(iv) Changes to the grasslands management plan must be consistent with maintaining the grassland resources.

(7) Forest Management Plan Requirements

(i) The forest management plan must contain a brief description of the forest land on the easement area and the management system and practices that conserve, protect, and enhance the viability of the forest land.

(ii) The forest management plan must describe how the forest contributes to the economic viability of the parcel or how the forestland serves as a buffer to protect the parcel from development along with the any management activities needed to maintain the economic viability or buffer status.

(iii) Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. Section 2103a), another practice plan approved by the State forester. The forest management plan may also include any reference to current private, industry, State, or local forest management plans that the enrolled forest area is currently under. A copy of the referenced plans may be included if available.

D. Agricultural Land Easement Plan Practice Implementation Cost-Share Sources

(1) Landowners may pursue cost-share assistance to implement conservation practices identified in the agricultural land easement plan through other USDA conservation programs, such as the—

(i) Agricultural Management Assistance Program (AMA).

(ii) Conservation Reserve Program (CRP).

(iii) Conservation Reserve Enhancement Program (CREP) long-term contracts or other noneasement enrollment types under CREP.

(iv) Conservation Stewardship Program (CSP).

(v) Environmental Quality Incentives Program (EQIP).

(vi) Regional Conservation Partnership Program (RCPP).

(2) The availability of financial assistance for a landowner through the above-mentioned programs is subject to the eligibility requirements, policies, and procedures of the individual programs.

(3) ACEP-ALE is not authorized to provide cost-share assistance for planning or the installation or implementation of conservation practices.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart H – ACEP-ALE Eligible Entity Certification

528.70 Overview of the Entity Certification Process

A. NRCS employs a national certification process through which eligible entities may be certified. Certification allows eligible entities administrative flexibility when participating in ACEP-ALE, based on demonstrated experience preserving agricultural land and successful participation in NRCS's Farmland Protection Program (FPP), Farm and Ranch Land Protection Program (FRPP), or ACEP-ALE.

B. An eligible entity may submit a written request for certification and all required request package documents at any time to the State conservationist for the State in which they are seeking certification. There is no specific solicitation period for certification requests.

Multistate Certification.—If an eligible entity seeks certification in multiple States, the written request must be submitted to the State conservationist for the State in which the eligible entity has completed the greatest number of FPP, FRPP, or ACEP-ALE funded easement acquisitions and must list all the States for which it is seeking certification. Eligible entities seeking multistate certification must demonstrate the ability to address State-specific conservation easement requirements in each State listed. The lead State conservationist is responsible for the State conservationist actions described in this subpart and notifies the regional conservationist and other affected State conservationists of the request and review outcomes.

C. The State conservationist reviews the materials submitted in the request package. Based on the review, the State conservationist may recommend the entity for certification to the regional conservationist, may deny the request for certification, or may follow up with the entity as appropriate to obtain any additional information.

D. State conservationist recommendations to approve certification requests are forwarded to the regional conservationist. Final determination on certification approval rests with the regional conservationist. The regional conservationist notifies the eligible entity of the final decision in writing and sends a copy to the appropriate State conservationists. For eligible entities that are certified, the administrative flexibilities associated with such certification may be implemented only under a fully executed ACEP-ALE grant agreement for certified eligible entities or, where authorized, under the certified eligible entity terms of an ACEP-ALE program agreement.

E. If the State conservationist or the regional conservationist determines that an eligible entity does not meet certification requirements, written notification of that decision including identification of the reasons for denying certification is sent to the eligible entity. The eligible entity may be invited to resubmit its application after addressing the criteria identified in the denial. An eligible entity's failure to achieve certification does not affect its ability to participate in ACEP-ALE as a noncertified eligible entity.

528.71 Certification Prerequisites

An entity seeking certification must meet the requirements of an eligible entity as identified in subpart D, section 528.32 of this part, and must provide evidence to the State conservationist documenting that the entity—

(1) Agrees to use easement valuation methodologies identified in 7 CFR Section 1468.24 for ACEP-ALE funded easement acquisitions.
(2) Completes conservation easement transactions effectively and in a timely fashion. Closing efficiency is evaluated by determining the average time to close all ACEP-ALE, FRPP, or FPP funded conservation easements over the most recent 5-year period. If the eligible entity has acquired less than 5 such easements over the most recent 5-year period, the State conservationist has discretion to review additional years as is necessary to adequately gauge the closing capabilities and efficiency of the eligible entity.
(3) Maintains the capacity to enforce the provisions of easement deeds and provides documented history of such enforcement. Capacity to enforce is a combination of monitoring conservation easements and addressing violations of conservation easement terms. The entity must demonstrate that in the last 5 years it has—
  (i) Monitored all ACEP-ALE, FRPP, or FPP funded conservation easements on at least an annual basis, with an onsite visual inspection at least once every 5 years and provided required monitoring reports to NRCS annually.
  (ii) Timely addressed violations of easement provisions to bring them back into compliance.
(4) Agrees in its request for certification to the use of the published ACEP-ALE grant agreement for certified eligible entities if certified. This agreement satisfies the requirement that the entity have a plan for administering easements enrolled under this part, as determined by NRCS (see subpart U of this part for sample cover letter from an entity requesting certification).
(5) Provides evidence that the eligible entity meets the criteria and requirements in one of the following categories:
  (i) Land Trust Accredited by the Land Trust Accreditation Commission—The entity:
    - Is currently accredited by the Land Trust Accreditation Commission, and such accreditation is in good standing, and
    - Holds, manages, and monitors not fewer than 10 ACEP-ALE, FRPP, or FPP funded conservation easements in good standing.
  (ii) State Agency—The entity:
    - Is a State Department of Agriculture or other State agency with statutory authority for farm and ranchland protection, and
    - Holds, manages, and monitors not fewer than 10 ACEP-ALE, FRPP, or FPP funded conservation easements in good standing.
  (iii) General Certification for any Eligible Entity Type—The entity:
    - Holds, manages, and monitors a minimum of 25 agricultural easements (these do not have to be NRCS-funded easements),
    - Of the 25 agricultural easements, the entity holds, manages, and monitors a minimum of 10 ACEP-ALE, FRPP, or FPP funded conservation easements in good standing, and
    - For entities that are nongovernmental organizations, provides evidence of the existence of a sufficient dedicated fund for the purposes of legal defense, monitoring, and enforcement. Dedicated funds are also referred to as "stewardship funds" or "legal defense funds."
(6) States must verify the information submitted by the eligible entity for the required 10 ACEP-ALE, FRPP, and FPP funded easements based on data from the easement business tool (e.g., National Easement Staging Tool (NEST)).

528.72 Certification Request Package

Eligible entities must submit a written request for certification along with all required documentation to the appropriate State conservationist. The request package should be submitted to the State conservationist electronically, must address all of the certification prerequisite requirements, and must include the following documents:

(1) A cover letter wherein the entity—
  (i) Requests certification under ACEP-ALE.
  (ii) Outlines the eligible entity's ability to meet ACEP-ALE certification requirements.
  (iii) Identifies which certification category they are in (Accredited Land Trust, State Agency, General Certification).
  (iv) Agrees to use easement valuation methodologies identified in 7 CFR Section 1468.24 for ACEP-ALE funded acquisitions.
  (v) Agrees to the use of the published ACEP-ALE grant agreement for certified eligible entities if certified, with a copy of the grant agreement attached to the cover letter as a reference.

(2) If an eligible entity is seeking multistate certification, the eligible entity must include a list of the States in which it is seeking certification.

(3) A list of the eligible entity's ten most recently closed ACEP-ALE, FRPP, or FPP funded conservation easement transactions and the final policy of title insurance for each.

(4) Evidence that the entity has the capacity to enforce the provisions of easement deeds and history of such enforcement, including—
  (i) The entity must provide a copy of its most recent annual monitoring reports for all ACEP-ALE, FRPP, or FPP funded conservation easement, unless previously submitted to NRCS.
  (ii) Verification from States based on data from the easement business tool (e.g., NEST) that the entity monitored all of its ACEP-ALE, FRPP, and FPP funded conservation easements in the year preceding the request for certification.
  (iii) Documentation of resolution for all ACEP-ALE, FRPP, or FPP funded conservation easements that were violated.

(5) Based on the certification category, the certification request package must also include the following documentation:
  (i) Land Trust Accredited by the Land Trust Accreditation Commission:
    - Current evidence that the entity has been awarded accreditation (first-time or renewal) by the Land Trust Accreditation Commission (LTAC) and that such accreditation is in good standing at the time certification is requested
    - The entity must disclose if LTAC accreditation was awarded subject to "expectations for improvement," as NRCS may request additional documentation related to the status of the entity's compliance with such expectations
    - A statement that the entity will seek renewal of their LTAC accreditation for the duration of any active ACEP-ALE grant agreements, or where authorized ACEP-ALE program agreements, with certified eligible entities
    - A statement that the entity will notify NRCS immediately upon changes to their LTAC accreditation status

Note: Entities with LTAC accreditation that is conditional, currently under probation, or otherwise out of compliance may not seek certification under this category.

(ii) State Agency:

- Current evidence that the agency is a State department of agriculture or other State agency with statutory authority for farm and ranchland protection.
- A copy of the agency's State statutory authority to purchase, hold, and enforce conservation easements for the purpose of farm and ranchland protection.

(iii) General Certification for any Eligible Entity Type:

- A list of 25 agricultural easements that the eligible entity holds, including the location of such easements (State and county), the date each listed easement was acquired and was last monitored, and the results of that monitoring visit (e.g., in compliance, in violation, etc.).

Note: If the entity requests a waiver to this requirement, then the entity must provide evidence of comparable experience working with conservation easements and with the agricultural community. This evidence must include a list of up to 25, but no less than 10, conservation easements or similar interests in real property the entity holds, manages, or enforces, and a written explanation of how this experience ensures the entity can meet ACEP-ALE purposes and requirements. The State conservationist has authority to grant this waiver and must document the basis for their determination.

- A copy of the written acquisition, monitoring, and enforcement policies of the eligible entity.
- Documentation of any enforcement actions the eligible entity has taken within the past 5 years in, such as court documents (such as motions initiating an enforcement action and court's opinions), or a narrative description of specific enforcement actions and violation resolution strategies.
- If no enforcement issues, a narrative description of any proactive actions taken by the eligible entity to educate easement landowners, maintain contact with easement landowners, and prevent easement violations.
- If the entity is a nongovernmental organization, documentation of the existence of a sufficient dedicated fund and the amounts set aside in the dedicated fund for monitoring and enforcement. Documentation must include either the relevant portions of the eligible entity's financial statements or bank records.
  - A dedicated fund is considered committed to these purposes if it is held in a separate account and may not be used for other purposes.
  - The dedicated fund is considered sufficient if it has at least $50,000 for legal defense and $3,000 per easement for management and monitoring.
  - Although a sufficiently capitalized risk pool will satisfy the requirement for a dedicated fund, documentation of a dedicated monitoring fund is still required unless the risk pool explicitly covers monitoring of easements.
- Entities applying under this category are encouraged to provide documentation of any professional accreditation or certification the entity has received that relates to the eligible entity's ability to meet ACEP-ALE certification requirements. This documentation is not required but may be considered during review of the request for certification.

528.73 Reviewing the Certification Request Package

A. The State conservationist or designee reviews an entity's certification request package for completeness and compliance with the requirements listed above (see subpart U of this part for sample letter acknowledging receipt of entity certification request package). Additionally, the State assembles and reviews NRCS records to verify the requirements for certification have been met and prepares necessary supporting documents, including—

(1) The State-completed "Certification Request Review and Determination Checklist" (see subpart U of this part for certification request review and determination checklist).
(2) Any documentation related to specific certification criteria that the State conservationist determines are salient to whether the eligible entity meets certification criteria.
(3) The State conservationist waiver to the requirement that the entity hold 25 agricultural easements, if applicable.
(4) A review of the ten most recently closed ACEP-ALE, FRPP, or FPP funded conservation easement transactions to verify that—
  (i) The eligible entity's appraisal was approved by the technical appraisal reviewer and supports the payment request (e.g., Standard Form (SF) 270) submitted by the eligible entity.
  (ii) The conservation easement deed language was approved by NRCS and is the same conservation easement deed language recorded by the eligible entity.
  (iii) The final policy of title insurance only contains approved exceptions from coverage.
  (iv) All parcels that include highly erodible croplands have an up-to-date HEL conservation plan developed in accordance with the HEL/WC provisions in 180-NFSAM.
(5) Confirmation using official agency data from the easement business tool (e.g., NEST) that the average closing time is 24 months or less for the 5 years preceding the request for certification.
  (i) Time to close an easement is measured from the date NRCS executed the agreement or amendment selecting a parcel for funding to the date of the last signature on the conservation easement deed for that parcel.
  (ii) Closing efficiency is measured by averaging the closing time of each parcel funded in the 5 years preceding the request.
  (iii) If less than 5 years of data are available, the closing efficiency will be based upon the number of years of available data.
  (iv) If the eligible entity has acquired less than 5 easements over the most recent 5-year period, the State conservationist has discretion to review additional years as is necessary to adequately gauge the closing capabilities and efficiency of the eligible entity.
  (v) The State conservationist may waive the 24-month-or-less average closing time requirement if the entity documents that its closings were delayed for reasons beyond its control. Delay may not be attributed to NRCS review of documents unless any single document review took longer than 90 days from the date the complete document was submitted to NRCS.
(6) Verification using official agency data from the easement business tool (e.g., NEST) that the entity has conducted annual monitoring and provided NRCS an annual monitoring report for every ACEP-ALE, FRPP, or FPP conservation easement held by the eligible entity.

(7) Confirmation that the eligible entity provided a brief description of how any ACEP-ALE, FRPP, or FPP easement violations were brought back into compliance. States will ensure the condition reported in the easement business tool (e.g., NEST) is consistent with the report provided by the entity.

B. If the certification request package is incomplete, States must provide the entity with a list of missing items needed before the review can be completed. Do not forward incomplete packages to the regional conservationist for approval (see subpart U of this part for sample letter notifying entity of incomplete request package).

C. If the request package is complete but the entity does not meet the certification requirements, the State conservationist notifies the entity in writing with a copy to the regional conservationist. The letter must identify the reasons the entity failed to meet the necessary criteria and may invite the entity to update its certification request (see subpart U of this part for sample letter notifying entity of denial of certification request).

D. If the State conservationist determines the request is complete, compliant, and recommends the entity for certification, he or she forwards the certification request package, additional supporting documentation, and his or her recommendation to the regional conservationist using the "Certification Review Request and Determination Checklist" (see subpart U of this part for certification request review and determination checklist).

Note: If an entity is seeking multistate certification, the regional conservationist may request the State conservationist from each of the listed States provide any information the State conservationist determines is salient to whether the eligible entity meets the certification criteria.

E. The regional conservationist reviews the certification request package and the supporting documentation from the States and documents their review using the eligible entity "Certification Request Review and Determination Checklist" (see subpart U of this part for certification request review and determination checklist).

F. If the regional conservationist determines that the eligible entity has met the requirements for certification, then the or she notifies the entity in writing that it is a certified eligible entity in accordance with 7 CFR Section 1468.26 (see subpart U of this part for sample letter notifying entity of approval of certification request). The regional conservationist will send a copy to the Deputy Chief for Programs and the State conservationist in all States in which the certification is effective. The notification must—

(1) Include the time period during which the certification is effective.
(2) Inform the certified eligible entity that its certification does not extend to eligible entities funded through the certified eligible entity.
(3) Inform the eligible entity that the administrative flexibilities associated with certification are only authorized for use through the execution of the published ACEP-ALE grant agreement for certified eligible entities, or where authorized through an ACEP-ALE program agreement that contains the specific terms for certified eligible entities.

G. If the regional conservationist determines that the eligible entity does not yet meet the certification requirements, he or she notifies the entity in writing with copies to the Deputy Chief for Programs and the appropriate State conservationists (see subpart U of this part for sample letter notifying entity of denial of certification request).

528.74 Certification and Administrative Flexibility Provided to Certified Eligible Entities

A certified eligible entity may carry out the actions required by ACEP-ALE with greater independence and without significant involvement from NRCS only through the execution of an ACEP-ALE grant agreement or where authorized, an ACEP-ALE program agreement, subject to the terms applicable to certified eligible entities. An eligible entity that becomes certified may continue to participate in ACEP-ALE through new or existing ACEP-ALE cooperative agreements or where authorized, an ACEP-ALE program agreement, but continue to be subject to the terms of such agreements under which the administrative flexibilities of certification are not authorized. The ACEP-ALE grant agreement, and where authorized, ACEP-ALE program agreement, with certified entities contain the terms that specifically authorize the administrative flexibilities provided to eligibility entities that are certified, including—

(1) The initial term of an ACEP-ALE grant agreement or where authorized, ACEP-ALE program agreement, with a certified eligible entity may be 5 fiscal years following the fiscal year in which the agreement is originally executed. An eligible entity must request certification and be approved as a certified eligible entity prior to entering into such agreements.

(2) Certified eligible entities may use their own terms and conditions in the agricultural land easement deeds but must include the standard United States right of enforcement clause as stated in the ACEP-ALE grant agreement or where authorized, ACEP-ALE program agreement. The certified entities deed terms and conditions must address the ACEP-ALE regulatory deed requirements identified in 7 CFR Section 1468.25(d) and in the executed agreement. To address the ACEP-ALE regulatory deed requirements, certified eligible entities may elect to use but are not required to use the "ALE Minimum Deed Terms" addendum published by NRCS.

(3) Certified eligible entities are required to obtain fair market value appraisals of the agricultural land easement, ensure clear title, and record the agricultural land easement deeds in accordance with the terms of the ACEP-ALE grant agreement or where authorized, ACEP-ALE program agreement, with certified eligible entities.

(4) For all easements requiring an HEL conservation plan, NRCS must approve the HEL conservation plan component prior to closing. Additionally, any required or agreed-to agricultural land easement plans must be completed as described in subpart G, section 528.63 of this part, based on the Farm Bill under which the ALE-agreement was originally executed and as follows:

(i) ALE-agreements entered into under the 2014 Farm Bill (see subpart G, section 528.63B of this part):

All agricultural land easements are subject to an agricultural land easement plan. Certified eligible entities must ensure the agricultural land easement plan and any required component plans are completed and signed by the eligible entity and the landowner prior to closing. NRCS review of the agricultural land easement plan is not required prior to closing unless the certified eligible entity selects NRCS to develop the plan or if an HEL conservation plan is required. NRCS will review the agricultural land easement plan after closing as part of the quality assurance review. For plans not developed by NRCS or that do not include an HEL conservation plan, the eligible entity may request NRCS review and approval of the agricultural land easement plan prior to closing.

(ii) ALE-agreements entered into under the 2018 Farm Bill (see subpart G, section 528.63C of this part):

If the certified eligible entity has agreed to develop an agricultural land easement plan as a condition of selection and funding or if an HEL conservation plan is required, the agricultural land easement plan must be developed and signed by the eligible entity and the landowner prior to closing. NRCS review of the entity-developed portion of the agricultural land easement plan is not required. NRCS may review the agricultural land easement plan after closing as part of the quality assurance review.

(5) Certified eligible entities close ACEP-ALE easements without NRCS approving the agricultural land easement deeds, conducting title reviews, reviewing title policy commitments, or approving appraisals prior to closing. NRCS conducts reviews of the easement acquisition transaction after closing through the quality assurance review process.

(6) In unique circumstances, the certified eligible entity may request NRCS review of a proposed entity-specific deed template prior to execution of the ACEP-ALE grant agreement. NRCS may decline to review these documents prior to closing without impairing NRCS's ability to complete and enforce a quality assurance review after closing.

Note: An eligible entity that becomes certified and has unclosed parcels identified as selected for funding under an existing valid ACEP-ALE cooperative agreement executed in FY 2019 or later, may request to transfer the parcels selected for funding and the associated funds to an ACEP-ALE grant agreement for certified eligible entities, or where authorized an ACEP-ALE program agreement, subject to the terms for certified eligible entities. Following receipt of written notice of certification, entities have 90 days to notify NRCS if they wish to transfer such parcels to an ACEP-ALE grant agreement or where authorized, an ACEP-ALE program agreement, subject to the terms and conditions applicable to certified eligible entities. Eligible entities that do not request a transfer or request a transfer after the 90-day period, continue to be subject to the terms of the existing ALE-agreements for the acquisition of agricultural land easements on parcels identified as selected for funding on such agreements.

528.75 Quality Assurance Review and Decertification

A. Upon certification by NRCS, the certification remains effective for the duration of the Farm Bill under which the certification was approved by NRCS and the administrative flexibilities of certification authorized under the terms of an executed ACEP-ALE grant or program agreement with a certified eligible entity remain valid for the duration of such agreements, unless the entity is decertified.

Note: The certification of an eligible entity ACEP-ALE under the 2014 Farm Bill remains valid for the purposes of entering into new ALE-agreements under the 2018 Farm Bill so long as the eligible entity meets the certification requirements in this part, agrees to the use of the terms of the ACEP-ALE grant agreement for certified entities for 2018 Farm Bill enrollments, and the certified eligible entity continues to pass the annual quality assurance reviews.

B. NRCS will conduct annual quality assurance reviews of the easement acquisition transaction and annual monitoring reports to ensure certified eligible entities continue to meet

the certification requirements. These reviews may occur at any time during the fiscal year. The reviews must determine whether the conservation easement was acquired and is being monitored and enforced in accordance with the requirements set forth by NRCS in its certification of the eligible entity and the ACEP-ALE grant or program agreement entered into with the certified eligible entity.

C. NRCS will review at least 15 percent of the conservation easement transactions submitted by the certified eligible entity for payment each fiscal year. NRCS will review the agricultural land easement deed, legal description or survey, title clearance and final policy of title insurance, appraisal, the baseline documentation report, and as applicable, the agricultural land easement plan, for every parcel in the 15 percent of parcels selected for quality assurance review. To perform a quality assurance review on the—

(1) Appraisal.—NRCS will complete a technical review according to the technical review standards and specification in 440-CPM, Part 527, Subpart F.

(2) Final Policy of Title Insurance.—NRCS completes a "Certificate of Use and Consent" based on a review of the final title insurance policy to determine if any unacceptable encumbrances remain on the title. If unacceptable encumbrances remain on the final title policy, NRCS also reviews the certificate of use and consent or substantively similar document that was completed by the eligible entity prior to closing (see subpart G of this part) and any associated title clearance documents. Purchasing easements on land with clear title and sufficient legal access is reflective of the entity implementing policies and procedures to ensure the long-term integrity of the ACEP-ALE funded conservation easement. NRCS also reviews the final title policy to verify it is insuring the correct parties and is for the full amount of the agricultural land easement purchase price.

(3) Agricultural Land Easement Deed.—NRCS must review the recorded deed to ensure that it satisfies all of the regulatory deed requirements (see subpart G, section 528.60 of this part) and specific ALE-agreement terms applicable based on the Farm Bill under which the agreement was originally executed.

(4) Boundary Legal Description or Survey.—NRCS will review the legal description or survey that is an exhibit to the deed to ensure it meets the requirements in subpart G, section 528.60B of this part, including, but not limited to, conformance to the description set forth in the title records and proper representation of the ACEP-ALE parcel.

(5) Agricultural Land Easement Plan.—For any plans not completed or reviewed by NRCS prior to closing, NRCS must review the agricultural land easement plan and any component plans to ensure that the plans meet the requirements applicable based on the Farm Bill under which the ALE-agreement was originally executed (see subpart G, section 528.63 of this part).

(6) Baseline Documentation Report.—NRCS must review the baseline documentation report, incorporated in the agricultural land easement deed by reference, to ensure the report meets the requirements identified in the ACEP-ALE grant agreement, or where authorized, ACEP-ALE program agreement, subject to the terms applicable to certified eligible entities.

D. NRCS must also conduct an annual review of the annual monitoring reports provided by the certified eligible entity. The entity has primary responsibility for monitoring and enforcement of the ACEP-ALE easement. NRCS must ensure that an annual monitoring report has been submitted annually for every NRCS-funded conservation easement held by the certified eligible entity. Additionally, each year, NRCS must conduct a detailed review of

at least 15 percent of the annual monitoring reports to ensure the reporting requirements have been met.

Note: NRCS must continue to conduct monitoring in accordance with 440-CPM, Part 527, Subpart P, on NRCS stewardship lands where the United States is identified in the easement deed as a grantee or a co-grantee (includes FRPP easements enrolled in 2006–2008), even if those easements are held by an entity that is certified under ACEP-ALE.

E. If NRCS finds that the certified eligible entity did not complete an agricultural land easement deed, title review and insurance, appraisal, or plan as required, or the annual monitoring as required, NRCS must notify the certified entity in writing. The letter from NRCS must identify the deficiencies, identify the required corrective actions to be taken by the entity, and provide a specified period of time for the entity to correct the deficiencies. If the deficiencies are not corrected to NRCS's satisfaction, NRCS may pursue remedies including but not limited to the return of cost-share funds, decertification of the entity, or termination of the grant agreement. If a deficiency is discovered, NRCS may also conduct a quality assurance review on any or all other parcels funded in the grant agreement.

F. NRCS will also assess the certified entities certification status such that if during the quality assurance review or at any other time, NRCS finds that the certified eligible entity no longer meets the criteria in 7 CFR Section 1468.26 and this subpart, NRCS will allow the certified eligible entity a specified period of time, at a minimum 180 days, to take actions necessary to correct the identified deficiencies to continue to meet the criteria as a certified entity.

G. If the certified eligible entity fails to correct the identified deficiencies, NRCS sends a notice of decertification to the eligible entity as provided in this section.

(1) If the deficiency has not been corrected at the end of the specified time period, NRCS must send written notice by certified mail, return receipt requested, of proposed decertification of the entity and ineligibility for future ACEP-ALE funding. This notice must contain a list of outstanding actions that have not been sufficiently corrected, the status of funds in the grant agreement, and the impact on the eligibility of the entity to apply for or request ACEP-ALE funds.
(2) The entity may contest the notice of decertification in writing to the Chief of NRCS within 20 calendar days of receipt of the notice of proposed decertification.
(3) The Chief, or designee, makes a final determination of decertification and sends formal notice of decertification to the entity with a copy to the appropriate regional conservationist, State conservationists, and the Deputy Chief for Programs. EPD enters decertifications into the easement business tool (e.g., NEST or successor business tool).
(4) NRCS may also determine if any further administrative action is necessary, including whether suspension and debarment action under 2 CFR Parts 180 and 417 should be initiated.

H. Grounds for decertification include, but are not limited to, any of the following:

(1) Failure to meet ACEP-ALE statutory and regulatory program requirements
(2) Breach or violation of the terms of an ACEP-ALE grant or program agreement
(3) Engaging in a scheme or device to defeat the purposes of ACEP-ALE, including coercion, fraud, misrepresentation, or providing incorrect or misleading information
(4) Committing any other action of a serious or compelling nature as determined by NRCS that demonstrates the certified eligible entity's inability to meet ACEP-ALE requirements

(5) Failure to maintain accreditation status in good standing with accrediting body if this was the criteria used to become a certified entity
(6) Failure to take corrective action to address deficiencies upon notice from NRCS

I. The period of decertification is 3 years. During these 3 years, the entity is not eligible for any of the benefits of certification.

J. Decertification results in termination of the ACEP-ALE grant agreement or ACEP-ALE program agreement, with certified eligible entities, and ineligibility of the entity to receive funding for any transactions remaining under the such agreement at the time of termination. NRCS may require the entity to return any financial assistance provided by NRCS for easements that fail a quality assurance review and are not remedied to NRCS's satisfaction. NRCS may determine that the decertified entity no longer qualifies as an eligible entity during the period of decertification or suspension and debarment of the decertified entity.

K. The entity may be recertified upon application to NRCS after the decertification period has expired and when the entity has met the requirements as outlined under 7 CFR Section 1468.26 and this part.

L. EPD will maintain a national list of certified and decertified entities that each State office must check prior to entering into an ALE-agreement.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart I – ACEP-ALE Financial Management Procedures

528.80 Overview

A. This subpart provides guidance on the administration of ALE-agreements, including contracting and fund management activities. In particular, this subpart addresses topics related to the use of ACEP-ALE funds, ALE-agreement management, the issuance of ACEP-ALE funds for easement payments, NRCS procurement of review reports, and easement conveyance and recording requirements. Several topics addressed in this subpart are covered in greater detail in other agency policy. Wherever possible, these policies have been cross-referenced.

B. NRCS is responsible for the administration and management of ACEP-ALE funds. The Financial Management Modernization Initiative (FMMI) system is used for the obligation and payment of ACEP-ALE funds along with the easement business tools (e.g., National Easement Staging Tool (NEST)) for the tracking of ACEP-ALE applications, agreements, and parcels.

C. All obligations and payments for the acquisition of the easement must comply with the most current easement internal controls policy. NRCS may not provide tax advice, including any representations about the tax implications of any easement, contract, or financial transaction.

D. Only after the appropriate documents are reviewed, determined complete and proper, and funds availability is verified, may the State conservationist sign the appropriate obligating document. Funds are then obligated in FMMI to the eligible entity as the vendor. The eligible entity must provide all information needed to establish the eligible entity as the vendor in FMMI based on the entity's registration in the System for Award Management (SAM).

E. NRCS enters into an ALE-agreement with the eligible entity; obligates funds associated with the ALE-agreement; executes any needed amendments, memorandums, or other supplemental documents associated with the agreement; maintains the ALE-agreement file and the individual easement case files associated with each ALE-agreement; ensures the terms of the ALE-agreement are fulfilled; and issues payments in accordance with applicable policies, including the most current easement internal controls policy, and applicable NRCS and FPAC-BC financial management policy, and grants and agreements policy.

528.81 Calculating Final Easement Payment Amounts

A. The amount obligated is based on the estimated Federal share as determined using the eligible entity's estimates of acreage, fair market value of the agricultural land easement, and non-Federal share amount for each parcel (see subpart F, section 528.51 of this part).

(1) For ACEP-ALE cooperative agreements or ACEP-ALE grant agreements with certified eligible entities, the ACEP-ALE funds are obligated and managed in FMMI at the individual fiscal year attachment level, with the amounts associated with the individual parcels selected for funding listed in the FMMI obligation based on the amounts in the attachment. After an ACEP-ALE cooperative or grant agreement has been entered into, there may be changes to the estimated easement value based on the

final approved appraisal or changes in estimated acreage. These final approved acreages and appraised easement values, along with any bargain sale reductions, NRCS scope determinations, amount of ACEP-ALE funds available under the ALE-agreement attachment on which the parcel is listed, and if applicable, approved waivers of applicable eligible entity cash match requirements, will be the basis for determining whether adjustments to the Federal share are needed and to determine the final ACEP-ALE cost-share payment amounts in accordance with limitations described in subpart E, section 528.43 of this part and subpart F, section 528.51 of this part.

(2) For ACEP-ALE program agreements, the ACEP-ALE funds are obligated to each individual ACEP-ALE cost-share contract associated with that program agreement. The ACEP-ALE cost-share contract is used to provide the cost-share assistance funds for the purchase of a single easement. States authorized to use ACEP-ALE program agreements are provided specific guidance related to ACEP-ALE fund obligation, management, and payment.

B. If the landowner is paid more than the appraised fair market value of the agricultural land easement, the eligible entity is responsible for 100 percent of the easement cost over the appraised fair market value of the agricultural land easement.

C. In the case of a bargain sale, where the landowner chooses to donate part of the agricultural land easement value by accepting a payment less than the full appraised market value of the easement, the eligible entity must contribute a minimum of the purchase price (appraised fair market value of the agricultural land easement minus the landowner donation) based on the applicable non-Federal share requirements as provided in subpart E, section 528.43 of this part.

D. Prior to closing, the eligible entity must provide the applicable "Statement to Confirm Matching Funds" (Form NRCS-CPA-230 or successor form) signed by the landowner and the eligible entity acknowledging—

(1) The appraised fair market value of the agricultural land easement.
(2) The landowner's charitable donation or qualified conservation contribution toward the easement value.
(3) The agricultural land easement purchase price.
(4) The eligible entity cash contribution amount.
(5) The Federal share.
(6) For 2014 Farm Bill enrollments, the administrative costs for the agricultural land easement and the eligible entity's recommended entity and landowner contributions to acquisition costs and to a stewardship fund (see subpart U of this part for "Statement to Confirm Matching Funds," Forms NRCS-CPA-230 (2014 Farm Bill version)).
(7) For 2018 Farm Bill enrollments, the estimated or actual amounts for the easement acquisition related costs and stewardship and monitoring costs broken out by the amounts for such items provided by the eligible entity and if applicable, by the landowner. For each of the easement acquisition related cost items, the eligible entity must enter only the cost of the item procured from a third-party for the services or reports that meet the applicable NRCS requirements. (See subpart U of this part for the "Statement to Confirm Matching Funds," Forms NRCS-CPA-230 (2018 Farm Bill version).)

Note: For 2018 Farm Bill enrollments, the submission of receipts or invoices is only required to support the procured costs relied upon by the eligible entity to meet the

minimum non-Federal share requirement (see subpart E, section 528.43B) of this part.

E. The estimate of an eligible entity's recommended contribution to a stewardship fund should be justified by an estimate of the expenses the eligible entity will incur over time in monitoring and enforcing the easement.

(1) State program managers must scrutinize recommended contributions of more than 2 percent of the appraised fair market value of the agricultural land easement. State program managers may approve a contribution to a stewardship fund in excess of 2 percent where the entity provides a documented rationale and basis supporting the amount. As needed, State program managers may consult with the Easement Programs Division (EPD) for assistance evaluating these requests.

(2) NRCS must review the matching funds requirement with the landowner to ensure that the landowners understand that ACEP-ALE does not require them to contribute to the stewardship fund or the easement acquisition cost and must certify through the execution of the "Statement to Confirm Matching Funds" (Forms NRCS-CPA-230 or successor form) that this discussion has occurred. It is recommended that this discussion between NRCS and the landowner occur in person during the NRCS onsite visits to complete the onsite inspections, ranking, preliminary certificate of inspection and possession, or other due diligence activities.

F. For 2014 Farm Bill Enrollments:

The eligible entity is required to certify that its minimum required cash contribution comes from other sources outside of the landowner. This applies to both formal and informal agreements made between the landowner and the eligible entity. For the purposes of making this determination, the term "landowner" includes the landowner's immediate family members and organizations controlled or funded by the landowner or an immediate member of the landowner's family.

528.82 Easement Closing and Payment Procedures

A. Overview

(1) Payment of the Federal share of the agricultural land 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.

(2) Payments made for the purchase of agricultural land easements are based on the information provided on the payment request form (e.g., Standard Form (SF) 270, "Request for Advance or Reimbursement") and associated documents (e.g., the applicable SF-270 supplement). The payment request form (e.g., SF-270) and all required payment request documentation are prepared by the eligible entity and submitted to NRCS. The eligible entity may submit the payment request package (e.g., SF-270 and associated documents):
(i) Prior to closing when a payment is to be issued at closing (advance payment)
(ii) After the agricultural land easement has been recorded and the landowners have been paid (reimbursement)
(iii) On a quarterly basis for each quarter that agricultural land easements have been recorded and the landowners have been paid (reimbursement)

(3) The entity must submit a separate payment request package (e.g., SF-270 and associated documents) to NRCS for each parcel. 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. The timelines for submission of documents to NRCS are outlined in this subpart.

Note: For ACEP-ALE agreements entered into under the 2014 Farm Bill or in fiscal year 2019 only, as applicable, a copy of the NRCS approval letter for each parcel that has received an eligible entity cash contribution waiver must be included in the payment request package for that parcel.

(4) If an advance of the Federal share will be requested for easements that will be acquired under an ACEP-ALE cooperative agreement or where authorized, an ACEP-ALE program agreement individual cost-share contract with a noncertified eligible entity, in addition to submitting the required payment request package documents, eligible entities must also obtain NRCS approval of the agricultural land easement deed and exhibits thereto, including the legal description or survey, appraisal, title commitment, baseline documentation report, and as applicable, the agricultural land easement plan, prior to requesting advance of the Federal share or closing on an agricultural land 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 ACEP-ALE Acquisition" and provides a copy to the eligible entity (see subpart U of this part for the NRCS approval letter to proceed with the ACEP-ALE acquisition).

(5) Payment of the Federal share for the purchase of the agricultural land easement is made to the eligible entity established as the vendor in FMMI. For advance payments, the eligible entity must assign the payment of the Federal share to the closing agent (payee) on the payment request form (e.g., SF-270). For reimbursements the eligible entity may receive the funds directly or may assign the payment on the payment request form (e.g., SF-270). Payments are made through an electronic funds transfer (EFT). The payee must provide its tax identification number and bank routing and account information to NRCS. If an escrow or closing agent is the payee to administer the funds for the agricultural land easement purchase, its address is established as another address code under the eligible entity's vendor number in FMMI. For payments to the closing agent, a separate "Assignment of Payment" form (CCC-36 or successor form) is not required. For ALE, the eligible entity is the recipient of the Federal funds, and the closing agent is a vendor providing a service to the eligible entity. The closing agent for the eligible entity is not a recipient or subrecipient of the Federal funds provided under ACEP-ALE and therefore is not required to be registered in the Dun and Bradstreet Data Universal Numbering System (DUNS) or have current SAM registration.

(6) 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.

B. Closing and Payment Review Procedures for Easements being Acquired under an ACEP-ALE Cooperative Agreement

(1) Preclosing Steps: Reimbursements and Advances

(i) Step 1.—No less than 90 days prior to the targeted closing date, for each parcel the eligible entity must send to NRCS—

- The agricultural land easement deed and exhibits thereto, including the legal description or survey.
- A hardcopy and electronic copy of the appraisal report.
- A copy of the title company's title commitment and underlying documents.

- A summary of the findings or recommendations from the entity review of the recorded and unrecorded exceptions.
- A draft baseline documentation report for each parcel.
- A copy of the agricultural land easement plan or highly erodible land (HEL) conservation plan, as required pursuant to subpart G, section 528.63 of this part.
- Any impervious surface waiver requests and supporting documentation.
- A map of any existing and proposed building envelopes.
- For 2014 Farm Bill enrollments: Any waiver requests and supporting documentation for eligible entity cash contribution waivers for projects of special significance submitted after the ACEP-ALE cooperative agreement is entered into.

(ii) Step 2.—NRCS must review the materials provided by the eligible entity as described below. Generally, NRCS should complete the review within 45 days of receipt of complete materials from the eligible entity. However, for parcels that require national-level internal controls review on which an advance payment will be requested, NRCS must complete this review with 30 days of receipt of a complete package of materials from the entity. These timelines apply only after NRCS receives a complete set of the required materials from the eligible entity. NRCS must—

- Review the deed for conformance to policy and required deed terms. NRCS will provide the eligible entity with notification of the acceptability of the agricultural land easement deed or a list of changes needed to meet ACEP-ALE program purposes.
- Review the legal description or survey that is an exhibit to the deed, to ensure it meets the requirements in subpart G, section 528.60B 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.
- Conduct a technical review of the appraisal to ensure that the Federal share being provided by the United States is supported by the appraised fair market value of the agricultural land easement. NRCS will provide the eligible entity with notification of the acceptability of the appraisal or information on the changes needed to meet applicable appraisal standards and NRCS requirements.
- Examine the title commitment and complete Form NRCS-LTP-23, "Certificate of Use and Consent" (see subpart U of this part for Form NRCS-LTP-23). NRCS consults with the USDA Office of the General Counsel as necessary.
- Inspect the parcel and complete a Form NRCS-LTP-27, "Preliminary Certificate of Inspection and Possession" (see subpart U of this part for Form, NRCS-LTP-27).
- Provide the eligible entity with written notification of title issues that must be remedied, such as—
  - Recorded and unrecorded exceptions to the title that must be removed or subordinated.
  - Leases that must be terminated.
  - Options that must be cancelled.
- Review the draft baseline documentation report and as applicable, the agricultural land easement plan which may include an HEL conservation plan. Per the applicable plan and review requirements identified in subpart

G, section 528.63 of this part, NRCS will notify the eligible entity if the plan is approved or if additional changes are needed.

- Advances Only
- NRCS must send the letter to the eligible entity providing the closing agent requirements for an advance payment of ACEP-ALE funds and attach the NRCS closing agent requirements (see subpart U of this part for the letter to the eligible entity regarding closing agent requirements for ACEP-ALE advance payments and the NRCS closing agent requirements).
- For 2014 Farm Bill Enrollments
- Review and complete determinations on eligible entity cash contribution requirement waiver requests submitted 90 days prior to the planned closing date.

(2) Preclosing Steps: Reimbursements Only

(i) Step 3.—No less than 30 days prior to the planned closing date, the eligible entity must—

- Notify NRCS of the planned date to close on the agricultural land easement.
- Provide NRCS with documentation of resolution of identified issues with title, appraisals, deeds, or easement plans.
- Provide NRCS a signed and completed "Statement to Confirm Matching Funds" (Forms NRCS-CPA-230):
  - For 2014 Farm Bill Enrollments
  - Use Form NRCS-CPA-230C for General ALE parcels or Form NRCS-CPA-230D for ACEP-ALE-GSS parcels (see subpart U of this part) and include a copy of any approved entity cash contribution waivers.
  - For 2018 Farm Bill Enrollments
  - Use Form NRCS-CPA-230E for General ALE parcels or Form NRCS-CPA-230F for ACEP-ALE-GSS parcels (see subpart U of this part).

(ii) Step 4.—Prior to the closing, NRCS must—

- Review and sign the "Statement to Confirm Matching Funds" (Forms NRCS-CPA-230 or successor form) and provide a copy to the eligible entity.
- Complete the preclosing/prepayment internal controls review in accordance with the most current easement internal controls policy. Within 10 days of receipt of the items listed in step 3 above, the closing request package for reimbursements must be submitted for national-level internal controls review and approval for all agricultural land easements that meet the national internal controls review thresholds or other submission criteria. NRCS must inform eligible entities that the national internal controls review may take up to 30 days from the date a complete package is submitted.
- Complete and sign the "NRCS Approval Letter to Proceed with the ACEP-ALE Acquisition" and provide a copy to the eligible entity (see subpart U of this part for the NRCS approval letter to proceed with the ACEP-ALE acquisition).
- For 2014 Farm Bill Enrollments
  Sign the agricultural land easement plan and provide a copy to the eligible entity.
- For 2018 Farm Bill Enrollments
  Ensure the HEL conservation plan on any highly erodible cropland meets requirements of 7 CFR Part 12 and a copy provided to the eligible entity.

(3) Preclosing Steps: Advances Only

(i) Step 3.—No less than 60 days prior to the planned closing date, the eligible entity must—

- Send NRCS a completed payment request package (e.g., SF-270, "Request for Advance or Reimbursement," and a completed SF-270 supplement) with all required documentation as identified in the ACEP-ALE-cooperative agreement (see subpart U of this part for SF-270 and SF-270 supplement for ACEP-ALE cooperative agreements).
- Notify NRCS of the planned date to close on the agricultural land easement.
- Provide NRCS with documentation of resolution of identified issues with title, appraisals, deeds, or easement plans.
- Provide NRCS a copy of the unexecuted agricultural land easement deed with all exhibits.
- Provide a copy of the baseline documentation report signed by the eligible entity and as applicable, the agricultural land easement plan signed by the landowner and eligible entity.
- Return the completed NRCS closing agent requirements document to NRCS signed by the closing agent verifying that the he or she meets the requirements and signed by the eligible entity in concurrence. The completed document must also include the closing agent's name, address, contact information, and EFT information (e.g., banking and routing information or wire instructions, and escrow account information). (See subpart U of this part for the letter to the eligible entity regarding closing agent requirements for ACEP-ALE advance payments and the NRCS closing agent requirements.)
- Provide a copy of the American Land Title Association (ALTA) title commitments and evidence of liability insurance equal to at least the amount of the Federal funds being provided with an eligible entity that is party to the ALE-agreement named as the insured party.
- Provide a signed settlement statement prepared by the closing agent.
- Provide NRCS a signed and completed "Statement to Confirm Matching Funds" (Forms NRCS-CPA-230):
  - For 2014 Farm Bill Enrollments
  - Use Form NRCS-CPA-230C for General ALE parcels or Form NRCS-CPA-230D for ACEP-ALE-GSS parcels (see subpart U of this part) and include a copy of any approved entity cash contribution waivers.
  - For 2018 Farm Bill Enrollments
  - Use Form NRCS-CPA-230E for General ALE parcels or Form NRCS-CPA-230F for ACEP-ALE-GSS parcels (see subpart U of this part).

(ii) Step 4.—Prior to the closing, NRCS must—

- Review and sign the "Statement to Confirm Matching Funds" and provide a copy to the eligible entity.
- Review the payment request package (e.g., SF-270, SF-270 supplement, and associated documentation) and complete the preclosing/prepayment internal controls review in accordance with the most current easement internal controls policy. States must submit a copy of the payment request package for national internal controls review and approval for all agricultural land easement payments that meet the national internal controls review threshold or other submission criteria. Complete payment request packages for national internal controls review must be submitted to NRCS National Headquarters no less than 30 days before the planned closing date.

- Complete and sign the "NRCS Approval Letter to Proceed with the ACEP-ALE Acquisition" and provide a copy to the eligible entity (see subpart U of this part for the NRCS approval letter to proceed with the ACEP-ALE acquisition).
- For 2014 Farm Bill Enrollments
  Sign the agricultural land easement plan and provide a copy to the eligible entity.
- For 2018 Farm Bill Enrollments
  Ensure the HEL conservation plan on any highly erodible cropland meets requirements of 7 CFR Part 12 and a copy provided to the eligible entity.

(iii) Step 5.—No more than 30 calendar days prior to the planned closing date and only after NRCS has received, reviewed, and approved all required documentation, NRCS may make an advance payment of the Federal share. The advance payment of the Federal share will be issued to the closing agent by EFT for the closing agent to hold in escrow.

(iv) Step 6.—After the Federal share is deposited in escrow and prior to the closing, the eligible entity must obtain a receipt for the Federal funds from the closing agent and provide it to NRCS.

C. Reimbursement to Eligible Entities for easements closed under an ACEP-ALE Cooperative Agreement

(1) Step 1.—After the eligible entity has completed the contractual requirements and paid the ACEP-ALE landowners, the eligible entity must—
  (i) Send NRCS a completed and signed SF-270 and a completed SF-270 supplement for ACEP-ALE cooperative agreements with all required documentation as identified in the ACEP-ALE cooperative agreement (see subpart U of this part for SF-270 and SF-270 supplement for ACEP-ALE cooperative agreements).
  (ii) Provide a copy of the closing agent's closing statement for each parcel.
  (iii) Attach on a separate piece of paper, the landowner's names, acres acquired, term of agricultural land easements, amounts paid, Federal share of the agricultural land easement cost, and dates payments were made to the landowners.
  (iv) Include a copy of the recorded agricultural land easement deed for each parcel.
  (v) Provide a copy of the ALTA title insurance policy.

(2) Step 2.—Upon receipt of a completed and signed SF-270, NRCS must—
  (i) Date stamp the SF-270.
  (ii) Ensure recorded agricultural land easement deed contains the approved language.
  (iii) Ensure the final policy of title insurance contains only those exceptions approved by NRCS and the eligible entity.
  (iv) Ensure funds are available for payment.
  (v) Request FPAC-BC Payment Operations Section (POS) (formerly Accounts Payable) to process payment in FMMI. Prompt Payment Act interest is not applicable to NRCS-funded programs.
  (vi) Enter Federal Assistance Award Data System (FAADS) data, if applicable, using Code for Federal Data Assistance (CFDA) number 10.931. FAADS reporting is not required for Federal and State Government payees.

(3) Step 3.—In the SF-270 block labeled "This space for agency use," NRCS must include—
  (i) A two-digit payment-type code.
    - Use "FP" for payments made in the same fiscal year the cooperative agreement was entered into.

- Use "FL" for payments made after the fiscal year the cooperative agreement was entered into.

(ii) A two-digit fiscal year of cooperative agreement.

(iii) The ACEP-ALE agreement number, the ACEP-ALE parcel number, and the FMMI WBS element.

(iv) The same ACPE-ALE agreement number obligated in FMMI.

(v) The name, signature, and telephone number of the NRCS certification official.

D. Closing and Payment Review Procedures for Easements Closed Under an ACEP-ALE Grant Agreement with a Certified Eligible Entity

(1) Step 1.—At the time the payment request is submitted, the certified eligible entity must provide NRCS—

(i) A completed SF-270, "Request for Advance or Reimbursement" and a completed SF-270 supplement for ACEP-ALE grant agreements with all required documentation as identified in the grant agreement (see subpart U of this part for SF-270 and SF-270 supplement for ACEP-ALE grant agreements).

(ii) A signed and completed "Statement to Confirm Matching Funds" (Forms NRCS-CPA-230):

- For 2014 Farm Bill Enrollments
  Use Form NRCS-CPA-230C for General ALE parcels or Form NRCS-CPA-230D for ACEP-ALE-GSS parcels (see subpart U of this part) and include a copy of any approved entity cash contribution waivers.
- For 2018 Farm Bill Enrollments
  Use Form NRCS-CPA-230E for General ALE parcels or Form NRCS-CPA-230F for ACEP-ALE-GSS parcels (see subpart U of this part).

(iii) The agricultural land easement deed and exhibits thereto, including the legal description or survey.

(iv) A hardcopy and electronic copy of the appraisal report.

(v) A copy of the title company's title commitment and underlying documents.

(vi) A certificate of use and consent or substantively similar document with the summary of the findings or recommendations from the entity review of the recorded and unrecorded exceptions.

(vii) A signed baseline documentation report for each parcel.

(viii) Any impervious surface waiver requests and supporting documentation.

(ix) A map of any existing and proposed building envelopes.

(x) As applicable, a copy of the signed agricultural land easement plan, including any required HEL conservation plans (see subpart G, section 528.63 of this part).

(xi) For Advance Payments Only

Return the completed NRCS closing agent requirements document to NRCS signed by the closing agent verifying that he or she meets the requirements and signed by the eligible entity in concurrence. The completed document must also include the closing agent's name, address, and EFT information (e.g., banking and routing information or wire instructions, and escrow account information). (See subpart U of this part for the letter to the eligible entity regarding closing agent requirements for ACEP-ALE advance payments and the NRCS closing agent requirements.)

Note: For ACEP-ALE grant agreements with certified eligible entities, NRCS will not review the content of items (iii)–(ix) above, prior to issuing the payment. NRCS reviews the agricultural land easement plan (if applicable) prior to closing in accordance with subpart H, section 528.74(4) of this part. NRCS will retain

submitted documents in the official easement case file and will review these documents for agricultural land easement transactions selected for quality assurance review.

(2) Step 2.—Upon receipt of a completed and signed SF-270, NRCS must—
(i) Date stamp the SF-270.
(ii) Complete the review of the payment request in accordance with the most current easement internal controls policy and upload the required information into the easement business tool (e.g., NEST).
(iii) Ensure funds are available for payment.
(iv) Request FPAC-BC POS to process payment in FMMI. Prompt Payment Act interest is not applicable to NRCS-funded programs.
(v) Enter FAADS data, if applicable, using CFDA number 10.931. FAADS reporting is not required for Federal and State government payees.

(3) Step 3.—In the SF-270 block labeled "This space for agency use," NRCS must include—
(i) A two-digit payment-type code.
- Use "FP" for payments made in the same fiscal year the grant agreement was entered into.
- Use "FL" for payments made after the fiscal year the grant agreement was entered into.

(ii) A two-digit fiscal year of grant agreement.
(iii) The ACEP-ALE agreement number, the ACEP-ALE parcel number, and the FMMI WBS element.
(iv) The same ACEP-ALE agreement number obligated in FMMI.
(v) The name, signature, and telephone number of the NRCS certification official.

E. Closing Agent Responsibilities for all Advance Payments

(1) The term "closing agent" refers to a title company, an escrow company, a private attorney, or other qualified entity or entities that assist the eligible entity with the execution and recordation of the agricultural land easement deed and other closing responsibilities.
(2) The closing agent must meet the NRCS closing agent requirements. See Subpart U, "Exhibits," for NRCS closing agent requirements.
(3) The closing agent may not hold the funds in escrow for more than 30 calendar days. If the agricultural land easement cannot be closed within 30 calendar days, the closing agent must return the funds (and any accrued interest) to NRCS in accordance with NRCS instructions. States, including EAB, must reach out to the appropriate FPAC-BC section to determine appropriate course of action.
(4) The escrow account must be fully insured by the closing agent to ensure that Federal funds are not lost due to bank failure or otherwise.
(5) If interest accrues while the funds are deposited in escrow, the closing agent will return the interest accrued, unless otherwise indicated within the cooperative agreement to the NRCS State office. Funds should be returned by EFT, but if paid by check, the check will be made payable to the CCC/NRCS.

F. Postclosing Requirements for All Reimbursements and Advances

(1) Step 1.—Immediately following closing, the eligible entity must ensure that the closing agent—

(i) Issues a policy of title insurance on a standard ALTA owner's policy in the amount of the purchase price as of the time and date of the recording of the agricultural land easement deed to the eligible entity.

(ii) Records or files the agricultural land easement deed in the office where local land records are officially recorded and stored in that State (e.g., county registrar of land records, county or town clerk land records office, etc.) within 5 business days of conveyance of the agricultural land easement to the holder.

(2) Step 2.—The closing agent is also responsible for delivering all of the following to the eligible entity:

(i) A statement covering the agreed upon closing costs

(ii) Original policy of title insurance on the standard ALTA owner's policy form

(iii) Original and one copy of executed settlement statements

(iv) Recorder's certified copies of the agricultural land easement deed and clearance documents, including subordination agreements

(v) IRS Form 1099-MISC reporting information

(3) Step 3.—Within 30 days of recordation or with the request for reimbursement, whichever is sooner, the eligible entity must provide NRCS a copy of the—

(i) Recorded agricultural land easement deed and clearance documents, including subordination agreements.

(ii) Final policy of title insurance.

G. Repayments for ALE-agreement Violation or Overpayment

The NRCS will notify the eligible entity in writing of the amount due, specifying the exact contract violation or the extent of the overpayment. The notification should advise the eligible entity that they will receive a formal bill from the National Financial Center (NFC) with information on where to send the payment. The bill should be received in approximately 2 weeks. The NRCS finance staff creates a bill in Internet Billing (IBIL) that provides the necessary information for NFC to produce the actual hardcopy bill that is mailed to the eligible entity.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart J – ACEP-ALE Easement Records, Monitoring, Enforcement

528.90 Maintaining Official Case Files and Official Electronic Records in the Easement Business Tools

A. The appropriate easement business tools and databases (e.g., National Easement Staging Tool (NEST)) must be updated with the following information within 10 days of receiving the recorded agricultural land easement deed:

(1) Eligible entity
(2) Name of the owners of the agricultural land easement acquired
(3) County and Federal Information Processing Standard (FIPS) code where land is acquired
(4) Acres acquired
(5) Acres of prime, unique, and important farmland acquired
(6) Acres of crop land acquired
(7) Acres of forested land acquired
(8) Acres of grazing lands acquired (includes range land and pastureland)
(9) Acres of incidental land acquired
(10) Revised total agricultural land easement value
(11) Revised Federal share of easement payment
(12) Revised eligible entity cash contribution toward the purchase of the easement
(13) Revised landowner donation towards the agricultural land easement value
(14) Closing date of the parcel
(15) Reimbursement date of payment, or, in the case of an advance, easement closing date
(16) 2018 Farm Bill enrollments: the composition of the non-Federal share

B. The following material related to acquiring an agricultural land easement must be maintained in a fireproof file at the NRCS State office:

(1) A copy of the signed and recorded agricultural land easement deed
(2) Subordination agreements, easement deeds, and other agreements entered into at the time of closing or after closing
(3) Title reports on the protected property and final title insurance policy
(4) Evidence of access documentation including documentation of determination of alternative legal access if applicable
(5) Copy of the written pending offer (purchase and sales agreement) between the eligible entity and landowner
(6) Maintain a copy of the payment request form (e.g., Standard Form (SF) 270, "Request for Advance or Reimbursement") and preclosing and prepayment internal controls review document, including as applicable a copy of and documentation related to any approved eligible entity cash contribution waivers or waivers of the adjusted gross income limitation
(7) A copy of the easement valuation documents, such as appraisal meeting Uniform Standards of Professional Appraisal Practices (USPAP) requirements, Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA or "Yellow Book") requirements, or both, or approval documents to use areawide market analysis or other industry-approved methods, and associated valuation reports. In lieu of a

physical copy, the file may include a reference to the location where the electronic copy of the easement valuation documents are stored.

(8) Appraiser's certification statement

(9) Appraisal technical review report

(10) Form NRCS-CPA-230 or successor form, "Statement to Confirm Matching Funds" (using the appropriate version based on the Farm Bill under which the ACEP-ALE agreement was originally executed) as a signed statement verifying the appraised fair market value and purchase price of the agricultural land easement, as well as the landowner and eligible entity's contributions

(11) Form NRCS-LTP-23, "Certificate of Use and Consent" (see subpart U of this part for Form NRCS-LTP-23), or substantively similar document used by certified eligible entities for easements acquired under an ACEP-ALE grant agreement, or where authorized, ACEP-ALE program agreement

(12) Form NRCS-LTP-27, "Preliminary Certificate of Inspection and Possession" (see subpart U of this part for Form NRCS-LTP-27) and the landowner disclosure worksheet (see subpart U of this part for the landowner disclosure worksheet)

(13) Completed environmental site assessment materials, including at a minimum, the hazardous materials field inspection checklist, hazardous materials landowner interview, and the environmental records search or a full phase-1 environmental site assessment report provided by the eligible entity

(14) Copies of all approved waiver requests, such as an impervious surface waiver; any eligibility criteria waivers of the 50 percent prime, unique, statewide, or locally important soil criteria; documentation of State or local criteria consistent with ACEP-ALE purposes; and as applicable, any the eligible entity cash contribution waiver; or adjusted gross income limitation waiver

(15) Completed baseline documentation report

(16) As applicable, the agricultural land easement plan (at time of closing) and subsequent amendments (see subpart G, section 528.63 of this part)

(17) Annual monitoring reports submitted by the eligible entity

(18) Documents related to suspected, potential, or confirmed violations and their resolution

(19) For 2018 Farm Bill Enrollments
Additional documents identified for retention in a fireproof file in accordance with specific guidance provided for buy-protect-sell transactions

C. The following material related to acquiring an agricultural land easement must be included in the ACEP-ALE case file (fireproof file is at the State's discretion) at the NRCS State office:

(1) A copy of the original ACEP-ALE proposal or application, including the 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

(2) Documentation regarding the ranking of the application and eligibility for funding, including the completed ranking document. The resources used to complete the ranking for an individual parcel, such as maps, soils information, or data that cannot be subsequently reproduced, should be stored in the easement case file or may be stored electronically in the appropriate easement business tools

(3) Signed ALE-agreement relating to the agricultural land easement or other interest in land and any subsequent amendments, attachments, or memorandums to the ALE-agreement

(4) Verification of highly erodible land (HEL) and wetland conservation (WC) eligibility (Form AD-1026, "Self-Certification of Highly Erodible Land and Wetland Conservation Compliance")
(5) Verification of AGI eligibility (Form CCC-941, "Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information," or successor form)
(6) Completed Form NRCS-CPA-52, "Environmental Evaluation Worksheet" for ALE plans developed by NRCS
(7) For 2018 Farm Bill Enrollments
Additional documents identified for retention in accordance with specific guidance provided for buy-protect-sell transactions

D. Separate six-part folders should be used to organize the documents associated with the entity ALE-agreement and the documents related to each individual ACEP-ALE parcel. A separate file is recommended for the documents associated with the ALE-agreement.

E. Documents required to be loaded in the appropriate easement business tools (e.g., NEST or successor electronic document system) are identified on the specific checklists for internal controls and internal controls guidance, business tools and associated document management guidance, audit sample requirements, or other specific national support service team customer guides.

528.91 Agricultural Land Easement Monitoring and Review

A. Pursuant to the terms of the ALE-agreement, the eligible entity, its successors, or its assigns has primary responsibility to monitor and enforce the terms of the agricultural land easement. The eligible entity will annually monitor compliance and provide NRCS with an annual monitoring report that documents that the grantee and grantor are in compliance with the terms and conditions of the agricultural land easement deed and as applicable, the associated agricultural land easement plan.

B. The eligible entity must deliver a copy of the annual monitoring report based on the most recent annual monitoring event for each closed parcel to the NRCS State program manager. Each fiscal year the States must complete the required questions in the "entity monitoring" section of the easement business tool (e.g., NEST) based on the current annual monitoring report. States should work with eligible entity to ensure the monitoring report contains the information to answer the required "entity monitoring" questions. Refer to 440-Conservation Programs Manual (CPM), Part 527, Subpart P, for information on monitoring and review requirements.

C. Annual monitoring by the eligible entity is conducted through onsite visits or through a review of the most recent and best publicly available imagery. During onsite monitoring, inspectors should meet with landowners, tenants, or renters if possible and invite the landowner to accompany them during the inspection. Photographs taken from designated photo points are desirable to document current conditions and any changes. If remote sensing discovers evidence of abnormalities, an onsite monitoring review should be done prior to delivering an annual monitoring report to NRCS.

D. The eligible entity monitoring should include a comparison of the conditions on the agricultural land easement to the conditions in the baseline documentation report. The eligible entity must prepare an updated impervious surface map if there are changes in the amount or location of impervious surfaces.

E. NRCS may conduct onsite monitoring if the eligible entity's annual monitoring report is insufficient or is not provided annually, or if NRCS has a reasonable and articulable belief of or evidence of an unaddressed violation, as determined by the State conservationist, or for older easements that require NRCS monitoring in the terms of the deed or ALE-agreement. Monitoring of agricultural land easements conducted by NRCS follows the procedures outlined in 440-CPM, Part 527, Subpart P. Every effort should be made to coordinate any NRCS onsite monitoring reviews with the holder of the easement.

F. Monitoring the HEL conservation plan component of the agricultural land easement plan is the responsibility of NRCS. NRCS must monitor HEL conservation plans in accordance with HEL and WC compliance status review requirements. NRCS must conduct the review of HEL conservation plan implementation in accordance with Title 180, National Food Security Act Manual (NFSAM).

G. If the land enrolled in ACEP-ALE is also enrolled in another USDA conservation program, the responsible agency conducts the contract status reviews or other monitoring activities as required for that conservation program. For example, NRCS conducts contract status reviews on practices NRCS has a contract with the landowner to implement under other conservation programs, such as the Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentive Program (WHIP), Agricultural Management Assistance Program (AMA), Conservation Stewardship Program (CSP), Conservation Reserve Program (CRP), or other programs.

528.92 Agricultural Land Easement Enforcement

A. Background

The eligible entity, or its successors or assigns, have primary responsibility for enforcement of the agricultural land easement and as applicable, the agricultural land easement plan. A violation is considered to have happened if any of the following occur:

(i) The land is converted or developed to nonagricultural uses that are not consistent with the purposes and provisions of the agricultural land easement or, for grassland enrollments, the land is converted or developed to nongrassland uses that are not consistent with the purposes and provisions of the agricultural land easement.

(ii) Damage or destruction occurs to the resources identified for protection in the agricultural land easement, including, but not limited to, highly erodible land, prime farmland, grasslands of special environmental significance, or historical or archaeological resources.

(iii) The terms and conditions of the deed conveying the agricultural land easement or other interest are violated.

(iv) Any required elements of an agricultural land easement plan are violated, including, but not limited to, the HEL conservation plan on highly erodible cropland is not implemented or maintained (see subpart G, section 528.63 of this part).

B. Procedures for Suspected or Potential Violation

(1) If NRCS encounters a suspected or potential violation of the agricultural land easement deed or as applicable, the agricultural land easement plan, NRCS notifies the eligible entity. NRCS may contact the regional Office of General Counsel (OGC) for advice on documentation recommendations and eligible entity notification procedures. The eligible entity must investigate and provide NRCS with

documentation of the outcome within the timeframe specified in the notification. The suspected violation and the eventual resolution of violations must be documented in the easement case file.

(2) Any NRCS visits to the agricultural land easement area and observations must also be documented in the easement case file. The individual making the report must date and sign each entry on each item of documentation. Positive reports, showing no evidence of violation, are just as important as a negative report.

(3) While it is the eligible entity's responsibility to enforce the terms and conditions of the agricultural land easement and as applicable, the agricultural land easement plan, if there is a violation of the HEL conservation plan component of the agricultural land easement plan as it relates to the HEL/WC provisions of the Farm Bill, NRCS is responsible to enforce the HEL/WC compliance provisions in accordance with the procedures outlined in 180-NFSAM. A violation of the HEL/WC compliance provisions and policy in 180-NFSAM is considered a violation of the agricultural land easement only after the landowner has exhausted all applicable appeal and waiver rights.

For example, if a person is deemed to be in good faith, in accordance with 180-NFSAM provisions, a person is not determined to be in violation of the HEL/WC provisions.

(4) NRCS will notify the eligible entity of a potential HEL/WC violation following the initial contact made to a landowner.

(5) NRCS will provide official notification of the HEL conservation plan violation as an official easement violation to the eligible entity only after the landowner has exhausted all the appeal and waiver rights afforded to the landowner in 180-NFSAM and 440-CPM, Part 510, "Appeals." Figure 528-J1 outlines the initial steps NRCS should take in case of a potential violation discovered by NRCS.

Figure 528-J1

Step	Action
1	Record the potential violation.
2	Photograph any portion that may have relevance.
3	If the landowner is onsite with you, document any discussions with the landowner. Discuss the potential violation if appropriate.
4	In the case of potential HEL/WC violations, notify the NRCS State easement manager, who will notify the landowner and then the eligible entity. In the case of all other potential violations notify the eligible entity and the NRCS State easement manager.
5	If an HEL/WC violation, begin the procedures outlined in 180-NFSAM.
6	Notify the eligible entity of the outcome of any 180-NFSAM proceedings.

C. Procedures for a Confirmed Violation

(1) When a violation is confirmed by NRCS, the State conservationist must notify the Easement Programs Division (EPD) and as appropriate, the regional office of the OGC, for advice on documentation requirements and the contents of the eligible entity notification document to ensure that NRCS is not compromising its enforcement position.

(2) After review by EPD, and as appropriate OGC, the State conservationist must send written notice to the eligible entity by certified, return receipt mail. The returned

receipt card must be kept in the official easement case file. It is the eligible entity's responsibility to contact the landowner and conduct enforcement proceedings.

(3) In the event of a violation of the agricultural land easement identified by the eligible entity or other third party, the eligible entity notifies the landowner and the violator, if different than the landowner, and NRCS. The landowner may be given reasonable notice and, where appropriate, an opportunity to voluntarily correct the violation in accordance with the terms of the agricultural land easement.

(4) The eligible entity must provide documentation to NRCS of their proceedings.

(5) In the event that the eligible entity fails to enforce any of the terms of the agricultural land easement as determined by NRCS, or if a violation is not addressed or corrected by the landowner and eligible entity, NRCS may exercise the United States' rights to enforce the terms of the agricultural land easement through any and all authorities available under Federal or State law. NRCS may also take actions with regard to the entity's status and ability to participate in the program, including but not limited to decertification of a certified entity, determining an eligible entity no longer eligible, terminating any active ALE-agreements with the entity, or other steps.

D. Legal Action and Cost Recovery

(1) If NRCS exercises its rights identified under an agricultural land easement, NRCS must provide written notice to the eligible entity at the eligible entity's last known address. The notice must set forth the nature of the noncompliance by the eligible entity and provide a 180-day period to cure. If the eligible entity fails to cure within the 180-day period, NRCS takes the action specified under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in land that it seeks to protect.

(2) Notwithstanding paragraph C above, subject to the terms of the United States right of the enforcement language in the conservation easement deed, NRCS reserves the right to enter upon the easement area if the annual monitoring report provided by the eligible entity documenting compliance with the agricultural land easement and the agricultural land easement plan is insufficient or is not provided annually, the United States has a reasonable and articulable belief of or evidence of an unaddressed violation, or for easements enrolled through ALE-agreements originally executed under the 2014 Farm Bill, to remedy deficiencies or easement violations as it relates to the agricultural land easement plan. NRCS shall provide the eligible entity and the landowner advance notice and a reasonable opportunity to participate in the inspection. However, in the event of an emergency, the entry may be made at the discretion of NRCS when the actions are deemed necessary to prevent, terminate, or mitigate a potential or unaddressed violation with notification to the landowner and eligible entity provided at the earliest practicable time. The landowner is liable for any costs incurred by NRCS as a result of the landowner's failure to comply with the easement requirements as it relates to agricultural land easement violations.

(3) In the event the United States exercises its right of enforcement and pursuant to the specific terms of the United States right of enforcement language in the recorded conservation easement deed, it is entitled to recover any and all administrative and legal costs associated with—

(i) Any enforcement or remedial action related to the enforcement of the easement from the landowner, including, but not limited to, attorneys' fees or expenses related to landowner's violations.

(ii) Any enforcement of the easement from the eligible entity, including, but not limited to, attorney's fees or expenses related to the eligible entity's violations or failure to enforce the easement.

(4) Legal action may include, but is not limited to, the following:
(i) Civil action to prevent further easement violation and collect damages
(ii) Debt collection to collect expenses incurred in enforcement
(iii) In especially egregious circumstances, criminal prosecution of the person who violates the easement, Federal law, or regulation
(iv) Other remedies available under State or Federal law depending upon the nature of the violation

528.93 Other Considerations

A. Mitigation.—ACEP funds may not be used to acquire easements to establish protections or to implement conservation practices that the landowner is required to establish as a result of a court order or to satisfy any mitigation requirement for which the ACEP landowner is otherwise responsible.

B. Ecosystem Service Credits Related to ACEP-ALE.—Landowners may obtain environmental credits under other programs if one of the purposes of such program is the facilitation of additional conservation benefits that are consistent with the conservation purposes for which the easement was acquired, and such action does not adversely affect the interests granted under the easement to the grantee or to the United States right of enforcement.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart K – ACEP-WRE Application Process and Eligibility Requirements

528.100 Overview of the Wetland Reserve Easements (WRE) Component

A. Wetland Reserve Easement Purpose

(1) The purpose of the Wetland Reserve Easement component of the Agricultural Conservation Easement Program (ACEP-WRE) is to restore, protect, and enhance wetlands on eligible private or Tribal lands while maximizing wildlife habitat benefits and wetland functions and values.

(2) The enrollment options available to eligible landowners are listed in figure 528-K1.

Figure 528-K1

Enrollment Option	Duration	Eligible Applicant
30-Year Contract	30 years	Acreage owned by Indian Tribes only
30-Year Easement	30 years or the maximum duration allowed under State law if less than perpetuity	Private landowners or Indian Tribes (including Native corporations)
Permanent Easement	Perpetuity	Private landowners or Indian Tribes (including Native corporations)

B. Program Objectives

The objectives of ACEP-WRE are to protect, restore, and enhance the functions and values of wetland ecosystems to attain—

(i) Habitat for migratory birds and other wetland-dependent wildlife, including endangered or threatened species and species of concern.
(ii) Protection and improvement of water quality.
(iii) Attenuation of floodwater.
(iv) Recharge of groundwater.
(v) Protection and enhancement of open space and aesthetic quality.
(vi) Carbon sequestration.
(vii) Protection of native flora and fauna contributing to the Nation's natural heritage.
(viii) Contribution to educational and scientific scholarship.

C. Agreements

(1) Partnerships may be established at the national, regional, or State level to—
(i) Implement components of the program.
(ii) Leverage program funds.
(iii) Provide for the longer-term conservation of the ACEP-WRE 30-year easements.
(iv) Coordinate acquisition or restoration implementation activities.
(v) Assist NRCS with the easement acquisition process.
(vi) Assist with development of easement restoration agreements.
(vii) Assist with restoration planning, design, or implementation.
(viii) Assist with monitoring and management activities.

(2) NRCS may enter into cooperative or contribution agreements with State or local agencies, conservation districts, and private conservation organizations to assist NRCS with program implementation, including the provision of technical assistance. NRCS may also enter into interagency agreements with other Federal agencies.
(3) Agreements may include but are not limited to the following:
  (i) Taking applications.
  (ii) Easement acquisition functions, such as procuring due diligence reports (environmental record searches, title commitments, etc.), appraisals, easement boundary surveys, or closing agent services.
  (iii) Restoration planning and design.
  (iv) Implementing restoration plans.
  (v) Maintenance, management, and monitoring activities.
(4) Agreements must be specific enough to accurately and specifically define deliverables, track program expenditures, and document accomplishments. Agreements must conform to applicable policy, depending on the type of agreement (see subpart O of this part for further information).
(5) NRCS may enter into agreements with a State, nongovernmental organization, or Indian Tribe to carry out the Wetland Reserve Enhancement Partnership (WREP) enrollment option as described in subpart Q of this part.

528.101 ACEP-WRE Application Process and Eligibility Overview

A. This subpart provides information about the application process, land eligibility, and landowner eligibility criteria. (See subpart U of this part for the ACEP-WRE business process.)

B. NRCS accepts ACEP-WRE applications on a continuous basis. At the discretion of the State conservationist and in coordination with any required national application cutoff dates, States may—

(1) Establish and advertise one or more application cutoff dates during the fiscal year. Complete applications received prior to the cutoff date will be reviewed, ranked, and considered for funding. Complete applications received after the cutoff date may be considered in the next application period.
(2) Each fiscal year, establish in consultation with the State technical committee, 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.

C. NRCS evaluates and tentatively selects eligible applications for funding through three primary steps:

(1) Gathering landowner information, determining landowner eligibility, and conducting preliminary investigations.
(2) Conducting onsite land eligibility determination (which includes documenting in the file the legal and physical access to the proposed easement site), conducting ranking based on established environmental and economic factors, and developing a preliminary restoration plan including anticipated restoration practices, quantities, and cost estimates.
(3) Tentatively selecting for funding based on outcome of eligibility determinations, ranking priority, cost estimates, fund availability, and any waiver requests; ability to provide clear title, access rights, any necessary water rights; and determinations that there are no onsite or offsite issues or conditions that would preclude or interfere with enrollment, restoration, or achieving the program purposes.

528.102 Landowner Information

A. Application

(1) Landowners interested in participating in ACEP-WRE must apply by submitting a completed application (Form NRCS-CPA-1200, "Conservation Program Application" or successor form) and required application package materials. (See subpart U of this part for application package materials.)

(2) Only owners of private land or acreage owned by Indian Tribes may enroll land in the ACEP-WRE. The landowners must be able to convey clear title to the land and provide consent or subordination agreements from each holder of a security interest in the land. (See subpart T of this part, for specific definitions of terms used.)

(3) Landowners must be willing and able to grant NRCS or its designee unencumbered, unrestricted, transferable, and otherwise sufficient physical and legal access from an identified Federal, State, or local public right-of-way to the entire enrolled area for the term of the enrollment for restoration, management, maintenance, monitoring, and enforcement purposes.

B. Information Provided to Landowners

(1) NRCS provides the landowners with program information to help them decide whether to proceed with the application process, including a list of the documentation that the landowner must provide before NRCS can take action on the application. All landowners must be informed about landowner and payment eligibility requirements under the highly erodible land conservation (HELC) and wetland conservation (WC) provisions of the Food Security Act of 1985 and the adjusted gross income (AGI) provisions. They must also be informed that land enrolled in ACEP-WRE is ineligible for any other USDA program payment for the life of the enrollment.

(2) Information provided to easement applicants includes—

(i) A (blank) sample copy of the most current warranty easement deed and associated exhibits appropriate for the enrollment option selected. The warranty easement deed is the document executed by a landowner to grant and convey to the United States by and through NRCS an easement with appurtenant rights of access to the easement area. Revisions to the warranty easement deed are not permitted.

(ii) Notification of landowner requirement to provide clear title and unencumbered, unrestricted, and transferable legal right of access from an identified Federal, State, or local public right-of-way to the entire enrolled area for the term of the enrollment.

(iii) A sample copy of Form AD-1158, "Subordination Agreement and Limited Lien Waiver," or successor form. This waiver is used to subordinate mortgages and obtain limited lien waivers to the United States, when applicable, with respect to any and all interests of the subordinating party in or related to the easement area. If an AD-1158 is used, it will be recorded with the warranty easement deed.

(iv) A sample copy of the Form NRCS-LTP-31, "Agreement for the Purchase of a Conservation Easement" (APCE).

Note: The APCE form must be fully executed by the landowner and NRCS before NRCS incurs costs for surveys and closing services. However, NRCS may incur costs related to determining easement compensation amounts and for preliminary investigations as described below in section 528.103E prior to executing the APCE form.

(3) Information provided to applicants for a 30-year contract on acreage owned by Indian Tribes includes—

(i) A (blank) sample copy of the most current "Contract for 30-year Land Use" and associated exhibits based on ownership type. The contract details the terms and conditions of the enrollment, responsibilities of the landowner and NRCS, restrictions on land use, and potential violations. Revisions to the "Contract for 30-year Land Use" are not permitted.

(ii) Notification of landowner requirements to provide clear title to the land, to provide sufficient access rights, and to terminate any farming leases prior to execution of the 30-year contract.

(iii) A sample copy of the Form NRCS-LTP-40, "Agreement to Enter Contract for 30-Year Land Use" (AECLU).

Note: The AECLU form must be fully executed by the landowner and NRCS before NRCS incurs costs for surveys and contract execution. However, NRCS may incur costs related determining valuation and for preliminary investigations as described below in section 528.103E prior to executing the AECLU form.

C. Information Provided by Landowners

(1) Before NRCS can determine landowner eligibility, all landowners, as listed on the current property deed or equivalent evidence of ownership documentation (hereafter ownership documentation), must be established in the Service Center Information Management System (SCIMS) or successor systems (i.e., Farm Service Agency (FSA) Business Partner database) and have the following documents completed, reviewed, and filed at the USDA service center (see subpart U of this part for sample landowner application checklist):

(i) A copy of the current ownership documentation, including a breakdown of ownership shares if applicable.

(ii) Documentation of legal access rights including, where applicable, documentation of legal access rights across adjoining landowners (e.g., executed right-of-way, executed agreement for granting right-of-way after survey).

(iii) Form AD-1026, "HELC/WC Certification" for all landowners listed on the ownership documentation, including required members of legal entities, filed with FSA.

(iv) Form CCC-941, "AGI Certification and Consent to Disclosure of Tax Information," and related forms, or equivalent successor forms as applicable for all landowners listed on the ownership documentation, including required members legal entities, filed with FSA.

(v) Evidence of signature authority as described below in section 528.103D.

(vi) When the landowner is a legal entity:

- Form CCC-901, "Member's Information," or Form CCC-902, "Farm Operating Plan" (when the landowner is a legal entity), or equivalent successor forms as applicable, filed with FSA.
- Proof that the legal entity is a legal and valid entity in the State where the land is located, usually by a certificate of good standing from the secretary of the State.

(2) Eligibility must be determined for all landowners of record, as listed on the current ownership documentation, including all individuals, legal entities, and entity members down to the individuals as required based on the "ACEP Landowner Eligibility Matrix" (see subpart U of this part for the ACEP landowner eligibility matrix). FSA is responsible for making payment eligibility determinations based on

compliance with AGI provisions pursuant to 7 CFR Part 1400 and FSA policy and procedures (see FSA Handbook 5-PL, "Payment Eligibility, Payment Limitation, and Average Adjusted Gross Income - Agricultural Act of 2014," and compliance with HELC/WC provisions pursuant to 7 CFR Part 12 and FSA policy and procedures (see FSA Handbook 6-CP, "Highly Erodible Land Conservation and Wetland Conservation Provisions").

(3) In accordance with FSA policy and procedures (see FSA Handbooks 1-CM, "Common Management and Operating Provisions," and 11-CM, "Customer Data Management"), FSA will work with customers to gather any additional information needed to complete the records in the FSA systems through SCIMS, or successor system. Using the information listed above, FSA will establish the specific business type for each landowner.

For land held by a trust that files using the same Social Security number as an individual, the landowner and FSA must ensure that the landowner as identified on the ownership documentation is in SCIMS or successor system and has proper documentation of landowner eligibility.

(4) NRCS is under no obligation to rank an application until all required application materials have been submitted by the landowner sufficient for NRCS to determine that all current landowners of record are eligible and that the land eligibility requirements can be met. Applications will remain in a "draft" or "pending" status until all landowner and land eligibility documents required from the landowner have been provided. Eligibility must be determined for the fiscal year in which the agreement to purchase (APCE form or AECLU form) is executed, which may require the landowner to submit updated application materials.

528.103 Landowner Eligibility Determination

A. General

Once the documents provided by the landowner have been received, NRCS must determine if the landowner is eligible to participate in the program by reviewing the following information (see subpart U of this part for the ACEP landowner eligibility matrix):

(i) Evidence of current ownership documentation to determine that the land has been owned by the applicant for at least 24 months, unless proof is provided of adequate assurances that the land was not acquired for the purposes of enrolling in ACEP-WRE, as described below in section 528.103B.

(ii) Evidence documented in the file of the landowner ability to provide unencumbered, unrestricted, and transferable legal right of access from an identified Federal, State, or local public right-of-way to the entire enrolled area for the term of the enrollment. This evidence must include a map depicting the location of the proposed enrollment area, the location and name of the public road from which the proposed enrollment area will be accessed, and the access route between the public road and the proposed enrollment area. The map should note where and if third-party lands are being crossed.

(iii) Documentation from FSA that all persons and legal entities on the ownership documentation, including required entity members, are compliant with the HELC/WC provisions of the Food Security Act of 1985.

(iv) Documentation from FSA that all persons and legal entities on the deed, including required landowner-legal entity members, are eligible for payment

based on the AGI provisions of the Food Security Act of 1985 so that NRCS can determine whether any landowners or landowner-legal entity members that do not meet the AGI limitation provisions will be requesting a waiver the of the AGI limitation or whether a payment reduction applies as described below in section 528.103C.

(v) Evidence of signature authority to determine its sufficiency as described below in section 528.103D.

(vi) Proof that the legal entity is legal and valid in the State where the land is located, usually evidenced by a certificate of good standing from the secretary of the State.

(vii) Proof of ownership of sufficient water rights, when needed for wetland restoration.

B. Twenty-Four-Month Ownership Review and Waiver Process

(1) All landowners must have owned the land for at least 24 months prior to application to be eligible to enroll land in a permanent or 30-year ACEP-WRE easement. NRCS may, at its sole discretion, waive the 24-month ownership requirement if any of the following criteria apply:

(i) The land was acquired by will or succession as a result of the death of the previous landowner.

(ii) The ownership change occurred due to foreclosure on the land, and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law.

(iii) The landowner provides adequate assurances that the land was not acquired for the purpose of placing the land in the ACEP-WRE.

(2) If a landowner has not owned the land for the requisite time period, NRCS must notify the applicant they are ineligible and may submit a new application once they have owned the land for the requisite length of time or may submit a written waiver request that describes or provides documentation that one of the three above-listed ownership waiver criteria applies. If the applicant submits a waiver request, the designated conservationist must forward the applicant's waiver request and documentation to the State conservationist. (See subpart U of this part for sample 24-month ownership and waiver information letter.)

(3) When evaluating ownership waiver requests, the State conservationist should consider the management and use of the property since it was purchased, documentation provided by the landowner, or other information provided by the landowner regarding their personal or financial circumstances. A 24-month ownership waiver request worksheet must be completed for all 24-month ownership waiver request determinations. (See subpart U of this part for the 24-month ownership waiver request worksheet.)

(4) The State conservationist may waive the 24-month ownership requirement if the documentation supports a finding that the land was acquired by will or succession or that the landowner exercised a right of redemption, as described in paragraphs (1)(i) and (1)(ii) above.

(5) If the basis for the waiver request is adequate assurance that the land was not acquired for the purpose of placing the land in ACEP-WRE, the responsible approving official (either the Chief or the State conservationist) will be determined based on the circumstances that resulted in the change in ownership.

(6) The State conservationist may waive the 24-month ownership requirement based on adequate assurances the land was not acquired for the purposes of placing the land in

ACEP-WRE when the change in ownership has occurred as a result of one of the following circumstances:

(i) The prior landowner owned the land for 24 months or more and continues to own one-half or greater interest after the ownership change, for example:
- A spouse is added to the deed.
- A prior owner transfers property from their individual ownership into a trust, life estate, or other entity of which they are a member or beneficiary.
- A majority share of an entity is bought out by an existing member.

(ii) The prior landowner owned the land for 24 months or more and transferred ownership amongst members of his or her immediate family (father, mother, spouse, children, grandparents, grandchildren, or siblings).

(iii) The change in ownership is the result of a completed contract for sale (or contract for deed) entered into 24 months or more prior to the application date.

(iv) The current landowner had leased the land for agricultural purposes for 24 months or more prior to the application date and provides evidence of agricultural lease or operator status for the required 24-month period.

(7) The State conservationist submits all other 24-month ownership waiver requests to the Chief through the Deputy Chief for Programs on **applications ranked high enough to be tentatively selected for funding and after all other eligibility requirements have been verified**. The State conservationist provides a copy of the landowner's written waiver request and any additional documentation provided by the landowner, an evaluation of the documentation and surrounding circumstances, a copy of the evidence of ownership document, and the State conservationist's recommendation on whether to grant the waiver documented on the 24-month ownership waiver request worksheet. The State conservationist must provide a clear explanation for the basis of their recommendation. (See subpart U of this part for the 24-month ownership waiver request worksheet.)

(8) The Chief determines if the information provided constitutes adequate assurances that the landowner did not purchase the land for purposes of enrolling in ACEP-WRE and whether a waiver should be granted. The Chief provides the determination to the State conservationist, and the State conservationist notifies the landowner of the determination and the landowner's rights to appeal. (See subpart U of this part for a sample ineligibility determination letter.)

(9) All 24-month ownership waiver requests, approved or denied, must be reported in the easement business tool (e.g., the National Easement Staging Tool (NEST)) by answering the "Land Owned for 24 Months" data element on the application record. Documentation of the basis for the request and the determination made by the State conservationist or Chief must be uploaded to the easement business tool (e.g., "Documents" page of the NEST record, with a document type of "24-Month Waiver Documentation" selected).

(10) If the enrollment agreement is not executed in the same fiscal year the 24-month ownership waiver is granted, the waiver remains valid and may be applied in a subsequent fiscal year only if there is no further change in ownership after the waiver is granted.

(11) If a waiver is not requested or if the request is denied, the application will be identified as ineligible in the easement business tool (e.g., NEST). If the landowner submits a new application at a later date, a new application record will be created in the easement business tool (e.g., NEST) and the date of the subsequent application will the basis for determining whether the land has been owned for the requisite period of time.

C. Adjusted Gross Income (AGI) Review

(1) All landowners, including required members of landowner-legal entities, must meet the AGI limitations as set forth in 7 CFR Part 1400 and must file with FSA all documents required by FSA to meet AGI filing requirements. All landowners, including required members of landowner-legal entities, must file with FSA the AGI certification, Form CCC-941 or successor form, in accordance with FSA requirements. Landowners that are a legal entity or general partnership must provide member information and percentage of ownership documentation on the forms CCC-901 or CCC-902 submitted to FSA. FSA is responsible for completing determinations on all AGI certifications.

Note: Indian Tribes are not subject to AGI provisions.

(2) NRCS must confirm with FSA that all landowners of record, including members of landowner-legal entities, are eligible for payment under the AGI provisions. NRCS must determine for landowners or members of landowner-legal entities determined by FSA to exceed the AGI limitation, whether a waiver of the AGI limitation or a payment reduction may be applicable. A determination of AGI eligibility must be made for the fiscal year the agreement to purchase (APCE form or AECLU form) is executed by NRCS. In accordance with 7 CFR Part 1400, eligibility for payment based on the AGI provisions is applicable as follows—

(i) AGI-eligible and no commensurate reduction of payment will apply if:

- FSA has determined that all landowners as listed on the most current ownership documentation, whether a person, a legal entity, or general partnership, including all required members of a landowner-legal entity or general partnership, do not to exceed the AGI limitation, or
- FSA has determined that a landowner exceeds the AGI limitation or a landowner-legal entity is subject to a commensurate reduction in payment due to entity members that FSA has determined do not meet the AGI provisions, and the affected landowners have requested and received a waiver of the AGI limitation from NRCS.

(ii) AGI-eligible but a commensurate reduction of payment will apply if FSA has determined all landowners as listed on the most current ownership documentation do not exceed the AGI limitation, but such landowners that are legal entities or general partnerships include members that FSA has determined to be AGI-ineligible, including those landowner-legal entities that request and are not granted a waiver of the AGI limitation by NRCS. In such cases, the ACEP-WRE payments for the affected landowner-legal entity or general partnership must be reduced by an amount commensurate to the percent ownership of such landowner-legal entity or general partnership held by AGI-ineligible entity members.

(iii) Ineligible and cancelled, if any landowner as listed on the current ownership documentation is ineligible based on the AGI provisions, including:

- Landowners that do not file the paperwork required to complete such determinations.
- Landowners that FSA has determined exceed the AGI limitation, including those that have requested and are not granted a waiver of the AGI limitation by NRCS.
- Landowner-legal entities or general partnerships with members that do not meet the AGI provisions and are unwilling to accept a commensurately

reduced ACEP-WRE payment, including those that have requested and are not granted a waiver of the AGI limitation by NRCS.

(3) For landowner-legal entities, NRCS will review forms CCC-901 or CCC-902 submitted to FSA at the time of application and again prior to obligation to verify that the landowner-legal entity or general partnership and all required members are AGI eligible, including any requested and granted AGI waivers, or if a commensurate payment reduction is applicable due to AGI-ineligible members of an otherwise eligible landowner-legal entity or general partnership. Any required commensurate reduction in payments for AGI-ineligible members of an otherwise AGI-eligible landowner-legal entity should be discussed with the landowners before continuing to process the application or agreement to purchase to determine if the landowners will elect to proceed with a commensurate reduction applied, withdraw their application, or for 2018 Farm Bill enrollments only, will request a waiver of the AGI limitation. NRCS will coordinate with the financial management staff to ensure that the full calculated easement consideration value is identified on the agreement to purchase and obligated in FMMI and that any necessary reductions occur at the time of payment (see subpart O, section 528.143 of this part for additional detail). (See subpart U of this part for sample letter notifying landowner of commensurate reduction.)

(4) AGI Waiver.—2018 Farm Bill enrollments only: landowners may request a waiver of the AGI limitation from NRCS if FSA has determined a landowner exceeds the AGI limitation or if a landowner-legal entity is subject to a commensurate reduction in USDA payments due to entity members who do not meet the AGI limitation provisions. The AGI limitation may be waived for such landowners on a case-by-case basis for enrollments that will result in the protection of environmentally sensitive land of special significance in accordance with 7 CFR Part 1400. The request must be submitted in writing by the affected landowner to the appropriate State conservationist. This includes, that for AGI-eligible landowner-legal entities that are subject to a commensurate reduction due to AGI-ineligible entity members, the written AGI waiver request must be submitted by the landowner legal-entity, the individual AGI-ineligible members of such entity do not have to submit a written request for a waiver of the AGI provisions. NRCS may bundle the written AGI waiver requests received from each affected landowner of record associated with a single application for enrollment. Following the receipt of the written landowner requests, NRCS will review, process, track, and report AGI waiver requests and determinations in accordance with the requirements set forth in the supplemental guidance specific to AGI waiver procedures.

(5) The AGI eligibility determinations completed by FSA and the subsequent issuance of any AGI waivers by NRCS, must occur prior to NRCS execution of the agreement to purchase and prior to NRCS execution of any documents required for landowner changes that occur after enrollment and prior to easement acquisition (see subpart M, section 528.121H of this part). The AGI determinations, including any AGI waiver determinations, used for the purposes of enrollment remain in effect for the duration of the enrollment unless there is a change in land ownership, the enrolled area, or the treatment of the land under the agreement that would affect the AGI determination, including the applicability of an approved AGI waiver. Furthermore, NRCS may not approve waivers of the AGI limitation after the enrollment agreement has been executed by NRCS except for changes in land ownership as described in subpart M, section 528.121H of this part, or for changes to the enrolled area or approved land treatment that are within the scope of the existing agreement or contract and warrant consideration.

Note: AGI waivers are not available for ACEP-WRE agreements originally executed under the 2014 Farm Bill.

(6) The AGI eligibility determination for all landowners of record, including any documentation related to AGI waivers or commensurate reductions, must be documented in the easement business tool (e.g., NEST) and the individual easement case file.

D. Signature Authority Documentation Review

(1) Many landowners, whether an individual person or a legal entity, conduct business, including program participation, through agents and representatives who have been authorized to execute documents on behalf of the landowner. NRCS may work with landowners through their authorized representatives if the landowner has provided sufficient signature authority documentation (see figure 528-K2 below) to demonstrate that the representatives are authorized to execute documents on behalf of the landowner and NRCS has determined that the representatives have the requisite signature authority for the type of document being executed.

(2) To verify a sufficiently authorized signatory for a legal entity, NRCS will review a copy of the organizational documents, formational documents, or other legal documents clearly designating the individuals who possess signature authority for the legal entity. The type of documents will depend on the type of entity and may include items such as filed articles of incorporation and bylaws, corporate charters, court orders of appointment, trust agreements, last will and testaments, partnership agreements and filed articles of partnership, certificates of formation, resolutions of the legal entity board of directors, or others. When specific or sufficient signatory authority is not provided in the legal entity documents, all members must sign the agreement to purchase and deed or 30-year contract documents, or must amend the legal entity documents to identify an authorized signatory, or must execute a power of attorney that designates an individual to act as the attorney-in-fact or agent for the legal entity.

(3) To verify a sufficiently authorized signatory for an individual person, NRCS will review a copy of the power of attorney, court orders of appointment, legal guardianship or conservatorship, or other legal documents clearly indicating the authority of the designated individual to sign on behalf of a landowner who is an individual person.

(4) In addition to instruments listed above, the following forms are adequate to authorize a representative to execute the specified documents on behalf of a landowner participating in ACEP-WRE:

Figure 528-K2

Form Number and Name	Sufficient Authority to Sign	Insufficient Authority to Sign
CCC-901, "Member's Information," or CCC-902, "Farm Operating Plan"	• Application • Conservation program contract • Payment applications	• Agreement for purchase of conservation easement • Warranty easement deed
FSA-211, "Power of Attorney" (provided appropriate selections have been made and signatures notarized)	• Application • Conservation program contract • Agreement for purchase of conservation easement • Payment applications	• Warranty easement deed

Form Number and Name	Sufficient Authority to Sign	Insufficient Authority to Sign
NRCS-CPA-09, "Power of Attorney," or successor form	Adequate for all ACEP-WRE documents	

Note: Of the NRCS and FSA forms listed in figure 528-K2, only the notarized Form NRCS-CPA-09 creates sufficient authority to sign the warranty easement deed and related closing documents.

(5) All signature authority documents must be reviewed by NRCS to determine adequacy and applicability and a copy retained in the individual easement case file or uploaded to the easement business tool (e.g., NEST). NRCS must also send the signature authority documents to the local Office of the General Counsel (OGC) attorney for review during the title opinion process.

E. Preliminary Investigations for Easements and 30-Year Contracts

(1) Once the information needed to determine eligibility, as required by this section (528.103) has been provided by the landowner and determined to be adequate by NRCS, ACEP-WRE funds may be used to obtain preliminary investigation services. The preliminary investigations include, at a minimum, a review of the documents assembled as part of the preliminary title search and a limited phase-I environmental site assessment (limited phase-I).

(2) The preliminary title search and underlying documents are used to determine if title issues exist that may affect valuation or the ability of the land to meet program purposes, including issues that may preclude or delay enrollment, closing, or restoration of the land. The preliminary title search must cover at least the entire area proposed for enrollment and must include copies of all the underlying documents for each individual title exception. In some cases, a title commitment binder may be ordered at this time, along with the preliminary title search. Generally, NRCS secures preliminary title search services from a vendor with whom NRCS intends to acquire easement closing services. See subpart M of this part for additional information on title review and closing agent requirements.

(3) NRCS conducts the limited phase-I to identify whether there are existing or potential onsite or offsite hazardous materials issues that may affect valuation or the ability of the land to meet program purposes, including issues that may preclude or interfere with successful enrollment, closing, and restoration of the land. This limited phase-I must include, at a minimum, an environmental records search, current landowner interviews, and an onsite visit to view present conditions. The limited phase-I must cover at least the entire area proposed for enrollment. NRCS will not enroll property where hazardous materials concerns are identified and that NRCS determines pose an unacceptable risk or a risk sufficient to make restoration not feasible.

(4) The preliminary title search and limited phase-I should be conducted as early in the process as possible to verify eligibility and minimize the risk of fund deobligation. The preliminary title search and all three parts of the limited phase-I must be obtained and reviewed prior to NRCS execution of the forms APCE or AECLU to enroll the land in ACEP-WRE unless there are extenuating circumstances and the State has received written authorization from Easement Programs Division (EPD) director to execute the forms APCE or AECLU and obligate funds prior to completing all preliminary investigations. All investigations must be completed prior to easement closure or 30-year contract execution.

(5) When conducted and provided by qualified non-NRCS personnel, preliminary title and environmental record searches and reports use financial assistance funds.

Preliminary investigation services are procured using an appropriate procurement method, and funds are obligated to the procurement document for obtaining title and record search services.

528.104 Ineligible Landowners

A. HELC and WC Compliance

(1) Landowners must be in compliance with the HELC/WC provisions of the Food Security Act of 1985 to participate in ACEP-WRE and receive payment.
(2) Through operation of "affiliated persons" under 7 CFR Section 12.8, all landowners on the current ownership documentation are required to be in compliance with both the HELC and WC provisions for the application to be considered eligible for enrollment. If any landowner listed on the most current ownership documentations is ineligible, the application is ineligible.
(3) If the landowner is a legal entity, the entity must be HELC and WC compliant, and required members of the legal entity must be in compliance (see subpart U of this part for ACEP landowner eligibility matrix). If any member of a legal entity that requires member eligibility is not in compliance with the HELC and WC provisions, the application is ineligible. If the landowner regains compliance with those provisions, a new application may be filed.
(4) The landowner's HELC/WC compliance must be rechecked at the time of enrollment and at the time of each payment. See subpart O of this part for further details regarding applicability of HELC/WC payment eligibility provisions to particular program payments.

B. Adjusted Gross Income

Persons or legal entities are ineligible to participate in ACEP-WRE if they do not meet the AGI provisions and limitations. Those determined ineligible that request and are not granted a waiver of the AGI limitation or for whom a commensurate payment reduction is not applicable are also ineligible. See subpart O of this part for further details regarding applicability of AGI payment eligibility provisions to particular program payments.

C. Federal, State, and Local Governments

Landowners that are units of Federal, State, or local governments are not eligible to enroll lands in ACEP-WRE.

528.105 Land Eligibility

A. General

(1) Determining eligibility for enrollment requires an assessment of both technical and administrative land eligibility requirements. For land to be determined eligible, NRCS must determine that—
(i) The land is either privately owned or acreage owned by Indian Tribes.
(ii) Enrollment of such land maximizes wildlife benefits and wetland functions and values.
(iii) The likelihood of successful restoration of such land and the resultant wetland functions and values merit inclusion in the program, taking into consideration the cost of the restoration, protection, enhancement, maintenance, management, and monitoring.

(iv) Such land meets the eligible land or other eligible land types identified in this section.

(v) The land is capable of having wetland hydrology and native vegetative communities restored, including a determination that adequate water rights are available, if applicable, to carry out desired wetland restoration and management efforts for the duration of the enrollment period.

(vi) The offering is of sufficient size and has properly configured boundaries that allow for the efficient restoration, management, maintenance, monitoring, and enforcement of the enrollment area.

(vii) The landowner is willing and able to grant NRCS or its designee unencumbered, unrestricted, transferable, and otherwise sufficient physical and legal access from an identified Federal, State, or local public right-of-way to the entire enrolled area for the term of the enrollment for restoration, management, maintenance, monitoring, and enforcement purposes.

(viii) Otherwise promotes and enhances ACEP-WRE objectives.

(ix) There are no offsite or onsite legal or physical issues that would preclude or interfere with successful conveyance, restoration, management, maintenance, monitoring, or enforcement of the enrollment area (see section 528.106 below for additional information).

(2) NRCS determines land eligibility for ACEP-WRE enrollment through an onsite evaluation process, described in paragraph B of this section. The ACEP-WRE statutory and regulatory land eligibility provisions identify eligible lands, other eligible lands, and ineligible lands. This section describes the criteria for determining whether land meets either eligible land or other eligible land criteria. Section 528.106 below identifies ineligible land criteria.

(3) For the purposes of enrollment in ACEP-WRE, a "certified" or "official" wetland determination, as defined by Title 180, National Food Security Act Manual (NFSAM), is not required to determine land eligibility.

(4) The easement case file must contain documentation that identifies which technical land eligibility criteria apply to which portions of the offered area and to the final surveyed easement area. If lands meeting the "other eligible lands" criteria are included in the easement area, the case file must document the basis for the inclusion of those lands along with any applicable waivers. (See subpart U of this part for a sample "Land Eligibility Documentation" worksheet.)

B. Onsite Determination

Land eligibility is initially determined by NRCS during onsite field reviews and as available, an appropriate interdisciplinary team of partner specialists, which may include the U.S. Fish and Wildlife Service (FWS). The landowner should be invited to participate in these field reviews. The State conservationist has discretion to require that all requirements outlined in section 528.103 above be completed to the satisfaction of NRCS before NRCS will conduct its onsite field reviews. During the onsite field reviews, NRCS will—

(i) Determine if the land offered for enrollment meets one or more of the eligible land type requirements to be eligible for enrollment, as listed in the ACEP-WRE statute, rule, and section 528.105C below.

(ii) Collect the information needed to complete a ranking of the offered area in accordance with subpart L.

(iii) Complete preliminary planning activities sufficient to develop cost estimates for eligibility and ranking purposes and to ensure that restoration activities are feasible.

(iv) Complete the "Hazardous Materials Field Inspection Checklist" and "Hazardous Materials Landowner Interview" to determine if there are unacceptable offsite or onsite conditions (see subpart U of this part for these two documents). In most cases, if hazardous materials issues are found, the site is not eligible for enrollment.

(v) Determine if any onsite or offsite issues not identified in paragraph (iv) above would make the land ineligible for enrollment.

(vi) Begin the National Environmental Policy Act (NEPA) evaluation process and assemble required documentation to ensure compliance with NEPA provisions by conducting an environmental evaluation and documenting alternatives and findings on the Form NRCS-CPA-52, "Environmental Evaluation Worksheet," or successor form.

Note: Form NRCS-CPA-52 or successor form must be completed along with appropriate supporting documentation and signed by the responsible Federal official (RFO) prior to execution of an agreement to purchase (forms APCE or AECLU).

(vii) Interview the landowner and complete the landowner disclosure worksheet which contains information about use or occupancy of the land, structures, leases, or other information about the property. (See subpart U of this part for landowner disclosure worksheet.) NRCS should request the landowner provide copies of any written, unrecorded leases or agreements at this time.

(viii) Verify that the proposed boundary and ingress and egress route are acceptable to NRCS. At minimum, land access to the proposed enrollment area must be all-wheel-drive accessible.

(ix) Identify if initial changes in the configuration of the offered area are necessary based on the outcome of these reviews, determine whether the landowner is interested in proceeding with a revised offered area, and ensure the evaluations and determinations made in this section are applicable to the area offered for enrollment.

C. Eligible Land Types – Farmed or Converted Wetlands

(1) Farmed wetland or converted wetland together with the adjacent land that is functionally dependent on the wetlands are eligible for enrollment, except that converted wetland are not eligible if the conversion was not commenced prior to December 23, 1985, except as provided for in section 528.105I(6) below.

(2) For the purposes of ACEP-WRE eligibility only, lands may be considered farmed wetland or converted wetland if such land is identified by NRCS to be any of the following:

(i) Farmed or Converted Wetlands.—Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, or farmed wetland pasture. NRCS makes this determination based on 180-NFSAM criteria.

(ii) Former or Degraded Wetlands.—Former or degraded wetlands that occur on lands that have been or are being used for the production of food and fiber, including rangeland, pastureland, hayland, and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially

restored through the implementation of the wetland reserve plan of operations (WRPO).

States are encouraged to document in the State-specific WRCG, the technical criteria and thresholds used to evaluate whether such impacts are significant and can be substantially restored. For example, a State may identify for certain wetland types, that the degradation may be considered significant only if more than 75 percent of the hydrology functions (e.g., surface area, depth, frequency, timing, or duration) have been impacted due to long-term grazing or silvicultural management practices, such as diversions, dams, ditches, or other water management infrastructure. The State may identify that such degradation may only be considered substantially restorable if more than 90 percent of the identified hydrology impacts will be directly addressed through the implementation of the WRPO and will result in the majority of the wetland functions and values for the identified wetland type being successfully restored on the site. NRCS then uses applicable technical criteria to aid in evaluating whether an individual application meets the requirements of this land eligibility category on a case-by-case basis.

(iii) Lands Substantially Altered by Flooding.—Agricultural lands substantially altered by flooding so as to develop and retain wetland functions and values. To qualify, the alteration must be determined to be of such magnitude and permanency that it is unlikely that the alteration and the resultant wetland functions and values will cease to exist during the easement or contract period. Furthermore, the extent of the surface or subsurface flooding or saturation must be great enough to create hydrologic conditions that have or will develop hydric soil and hydrophytic vegetation characteristics over time. Additional efforts may be utilized to further improve wetland functions and values through implementation of the WRPO.

Examples include—

- Land that has been scoured by floods or broken levees resulting in the development of wetland characteristics and providing wetland functions and values.
- Lands that have soil saturation and water table elevation changes as a result of offsite surface or subsurface hydrologic changes (e.g., dams and irrigation systems) resulting in the development of wetland characteristics and providing wetland functions and values.

D. Eligible Land Types – Croplands or Grasslands Flooded by Overflow of a Closed Basin Lake or Pothole

(1) Certain croplands or grasslands that were used for agricultural production that are subject to flooding from the natural overflow of a closed basin lake or pothole are eligible for enrollment in ACEP-WRE if the land has a high likelihood of successful restoration and meets all the criteria detailed below:
   (i) The size of the parcel offered for enrollment is a minimum of 20 contiguous acres.
   (ii) The soils are hydric.
   (iii) The depth of the water is 6.5 feet or less.

(2) Water depths vary throughout the year and from year to year due to the dynamic aspects related to flooding in these systems. Therefore, NRCS will verify the water depth within 15 business days of application or will accept landowners' self-

certification of water depth if NRCS's verification is not completed within 15 business days.

(3) Land flooded from the overflow of a closed basin lake is only eligible if the State or other entity is willing to provide a 50-percent share of the cost of the easement. This limitation does not apply to lands flooded from the overflow of a pothole. States must contact EPD for specific guidance regarding closed basin lake enrollments.

E. Eligible Land Types – Riparian Areas

(1) Riparian areas along streams or other waterways are eligible, provided that the offered riparian area directly links wetlands less than 1 mile apart and that those wetlands are currently protected or will be protected under the same ACEP-WRE easement transaction. Protected wetlands include areas currently enrolled under an existing easement or other resource protection device or circumstance that achieves the same objectives as an easement, such as a State or Federal wildlife management area.

(2) If the riparian area will link already-protected wetland areas, then no additional wetland acres are required to enroll the riparian acres.

(3) If the riparian area will link two or more wetland areas that are not yet protected but would be protected under the same ACEP-WRE easement action, then both the riparian area and wetland areas are eligible for enrollment and must be enrolled under the same or a concurrent easement transaction. The wetland areas to be enrolled must not meet any of the land ineligibility criteria under section 528.106 below.

(4) Eligible riparian areas should average no more than 300 feet in width, measured from the top of bank on one side, or 600 feet in width, if both sides of the river, stream, channel, or water body are offered for enrollment.

(5) Larger widths or linkages of wetland areas greater than 1 mile apart should be considered if the riparian zone and its associated wildlife or ecological values so warrant; waivers for additional width or for eligible wetland areas more than 1 mile apart may be granted by the State conservationist.

(6) The riparian areas, including the linking wetlands if enrolled under the same easement transaction, are considered to be a part of the eligible acres to which additional adjacent lands may be added.

F. Eligible Land Types – Lands in the Conservation Reserve Program (CRP)

(1) Eligible CRP lands include farmed wetlands and adjoining lands that meet all of the following criteria:

(i) Are subject to an existing CRP contract.

(ii) Have already been restored to or under ACEP-WRE will be restored to a condition that maximizes the highest wetland functions and values.

(iii) Are likely to return to production after the land leaves the CRP.

(2) Such lands may be enrolled in the ACEP-WRE only if the land and landowner meet the eligibility requirements of this subpart and if the enrollment is requested by the landowner and agreed to by NRCS. Upon closing of the easement, the CRP contract for the property will be terminated or otherwise modified, subject to such terms and conditions as are mutually agreed upon by FSA and the landowner.

(3) Lands established to trees under CRP are ineligible for enrollment unless they meet the requirements identified in section 528.106B(2) below.

G. Other Eligible Lands – Wetlands Restored or Protected Under a Private, State, or Federal Program

(1) Eligible land types previously restored privately or under a local, State, or Federal restoration program, on which the restored wetland areas meet or are capable of meeting NRCS restoration standards and specifications are eligible. These may include but are not limited to wetlands restored under the restoration cost-share agreement enrollment option of the former Wetlands Reserve Program (WRP), the former NRCS Wildlife Habitat Incentives Program (WHIP), or another similar restoration program, such as the FWS Partners for Fish and Wildlife Program, and may during the agreement period or after, be enrolled in ACEP-WRE. Such wetlands that have already been restored but are not fully protected will be considered a positive attribute in ranking.

Note: Lands that have been entered into the ACEP-WRE (including WRP) 30-year easement or contract option may, during the easement or contract period, be enrolled in the permanent easement option. Compensation for the permanent easement will not exceed 25 percent of the applicable geographic area rate cap (GARC) being offered at the time the land is offered for permanent enrollment (see subpart O, section 528.148, "Converting a 30-Year Easement to a Permanent Easement").

(2) Land subject to an easement or deed restriction that, as determined by NRCS, provides similar restoration and protection of wetland functions and values as would be provided by enrollment in ACEP-WRE, may still be considered eligible subject to the following requirements:
   (i) Such lands may be eligible if NRCS determines that the existing easement or deed restriction terms will not restrict or interfere with NRCS in its exercise of the rights to be acquired under the ACEP-WRE easement or the easement or deed restriction can be removed or subordinated to the ACEP-WRE easement.
   (ii) If the deed restriction or other interest is held by another Federal agency, a satisfactory agreement as to the respective rights of each agency must be reached and documented to the satisfaction of NRCS and OGC before NRCS may proceed.
   (iii) At least one of the following must apply, as determined by NRCS:
      - ACEP-WRE enrollment would provide significant additional resource protection, such as additional cropping restrictions.
      - The additional restoration and protection would provide critical habitat for targeted threatened or endangered species.
      - The existing easement or deed restrictions do not provide for full restoration of the wetland functions and values.

(3) Examples
   (i) An area subject to an FWS "no drain, burn, level, or fill" easement, which prohibits further drainage but does not restrict cropping. Because the FWS easement does not provide "comparable" conservation benefits, the ACEP-WRE easement would be conservation value added.
   (ii) A site may be eligible for a 30-year easement if the current deed restrictions would last for 10 years or less from the date of application.
   (iii) A site may be eligible for a permanent easement if the current deed restriction was for a term less than 30 years.

   Note: Lands with a deed restriction similar to ACEP-WRE that is 99 years in duration are not eligible for ACEP-WRE enrollment.

(4) Individual appraisals are required to determine the easement compensation values for lands subject to an existing easement or deed restriction that are determined to be eligible by NRCS if the applicable areawide market analysis (AWMA) fair market

values and associated GARCs do not take into consideration the presence of such deed restrictions (see subpart M, section 528.122 of this part for additional detail).

H. Other Eligible Lands – Hydric Soil Minor Components (Inclusions) and Problematic Hydric Soils (Atypical Situations)

(1) Often, there are minor components (small inclusions) of hydric soils in map units of nonhydric soils. These hydric soils are relevant in determining eligibility for ACEP-WRE if hydrology and hydrophytic vegetation can be restored.

(2) Some soils that meet the hydric soil definition may not exhibit typical hydric soil morphology. These problematic hydric soils exist for a number of reasons, and their proper identification requires additional information, such as landscape position and presence or absence of restrictive soil layers, or information about hydrology.

(3) In some cases, problematic hydric soils may appear to be nonhydric due to the color of the parent material from which the soils developed. In others, the lack of hydric soil indicators is due to conditions that inhibit the development of redoximorphic features despite prolonged soil saturation and anaerobic conditions. In addition, recently developed wetlands may lack hydric soil indicators because insufficient time has passed for their development, such as an agriculturally induced wet area created through compaction in a pasture. Sometimes, site disturbance, such as plowing, may obscure the evidence of hydric characteristics. For these situations, if site assessment and evaluation of the soils verifies that restoration of hydrology and hydrophytic vegetation is feasible, the areas may be considered eligible for enrollment in ACEP-WRE.

(4) When hydric soil minor components (inclusions) or problematic hydric soils occur, the land proposed for enrollment could be considered eligible land if it otherwise meets one of the eligible land types listed in this section. The decision to use this land eligibility criterion must be made by the State conservationist and be based on the restorability and ecological merits of the site.

(5) The decision to enroll such areas in ACEP-WRE only applies to ACEP-WRE and its authorities and has no bearing on the manner in which these soils are handled under the wetland identification process for wetland compliance purposes (see 180-NFSAM). The State conservationist must specifically consider the wildlife benefits and overall need to facilitate effective program implementation.

I. Other Eligible Lands – Adjacent Lands

(1) If the proposed enrollment area includes eligible lands as described in paragraphs C through H of this section, the proposed enrollment area may also include adjacent lands that meet all of the following criteria:

(i) The adjacent lands will contribute significantly to the wetland functions and values or are incidental but necessary for the practical administration and management of the enrolled area.

(ii) The acres of adjacent lands must not exceed the acres of otherwise eligible land to be enrolled.

(iii) The adjacent lands are considered to be primarily upland buffer and associated areas but may also include riparian areas that do not meet the requirements of paragraph E of this section, restored nonagricultural wetlands, created wetlands, artificial wetlands, and noncropped natural wetlands.

(2) The State conservationist may authorize a waiver allowing such adjacent land acres to exceed eligible land acres for certain unique situations. Unique situations that may warrant a waiver to allow adjacent lands acres to exceed eligible lands acres may include the following situations:

(i) Enrollment of unique or critical wetland complexes whose functions and values inherently depend on adjacent lands that do not meet one of the eligible land types. Examples of unique wetland complexes include, but are not limited to, pocosins, prairie potholes, playas, vernal pools, fens, bogs, and ridge and swale floodplain complexes.

(ii) Enrollment targeting at-risk wetland dependent species that require additional upland areas for successfully completing their life cycle.

(iii) Enrollment where the wetland acres could become degraded from agricultural activities on lands not in the enrolled area and additional upland buffers are needed for adequate protection of the wetland functions and values on the eligible lands acres.

(iv) Enrollment where the strict application of the ratio would create unmanageable boundaries, negatively impacting the practical administration or management of the enrolled area by NRCS.

(v) Enrollment where the strict application of the ratio would leave areas of land remaining outside the enrolled area that would be impractical or cost prohibitive for the landowner.

(3) The State conservationist, with input from the State technical committee and FWS, must include in the wetland restoration criteria and guidelines (WRCG) the State-specific technical considerations and parameters used to make determinations about the inclusion of adjacent lands (see subpart N, section 528.131 of this part for additional information). For the purposes of making land eligibility determinations related to the inclusion of any adjacent lands acres, the State-specific WRCG document must include—

(i) A description of the wetland types that meet the eligible land criteria that are typically enrolled in ACEP-WRE in the State, along with a description of types of adjacent lands that may be typically associated with such wetlands, including the characteristics and attributes of the adjacent land types and how such adjacent lands commonly contribute to the functions and values of the associated wetlands.

(ii) The technical criteria used to determine the extents or proportions of adjacent lands acres that may be appropriate for inclusion. And prior to the authorization of any waivers, the associated conditions under which a waiver to authorize the adjacent land acres to exceed the eligible land acres may be warranted for the different wetland types identified.

(iii) An upper limit on the ratio of adjacent lands acres to eligible lands acres based on what is appropriate for the identified wetland types and the purpose for which adjacent lands may be enrolled with such wetlands. The upper limits on the ratio of adjacent lands to eligible lands may differ based on the wetland type but may not for any wetland type exceed a ratio of 5 to 1 (five adjacent lands acres to one eligible land acre). The higher the proportion of adjacent lands the more rigorous the technical determination to ensure the inclusion of such lands is appropriate and necessary to achieve program purposes.

Note: The technical considerations and limitations applicable to a waiver to address the unique situations identified in paragraphs (2)(iv)-(v) above must also be described in the State-specific WRCG document but do not have to be broken out by wetland type and in general should not exceed a ratio of 2 to 1 (two adjacent lands acres to one eligible land acre).

(4) State conservationists are not authorized to grant waivers exceeding a ratio of 5 to 1 adjacent land acres to eligible land acres without prior written approval from the EPD

director. Requests to exceed the 5 to 1 ratio may be submitted by the State conservationist to the EPD director on an individual project basis or for specific wetland types in a designated area and must document the rationale for the request and be supported by the technical conditions and parameters described in the State-specific WRCG.

(5) Based on the technical conditions and parameters documented in the State-specific WRCG, the State conservationist determination to grant a waiver authorizing an individual enrollment to include more adjacent lands than eligible lands must be made on an individual easement basis. These determinations and waivers must be documented in the individual easement case file and must describe how the configuration of the individual enrollment meets the land eligibility requirements of this part and the applicable criteria identified in the State-specific WRCG document.

(6) Converted wetlands (180-NFSAM designations "CW" and "CW+year") are not eligible for enrollment in ACEP-WRE. However, where such areas are an incidental portion of an otherwise eligible easement offer, the converted wetlands may be considered eligible adjacent land if **all** of the following criteria are met:

(i) Not enrolling the area would create unmanageable boundaries, negatively impacting the practical administration of the enrolled area by NRCS.

(ii) Not enrolling the area would leave areas of land remaining outside of the enrolled area that would create uneconomic or unmanageable remnant parcels for the landowner.

(iii) The landowner is willing to enroll the acreage for no compensation.

(iv) The landowner is willing to restore the converted wetlands as prescribed by NRCS, entirely at the landowner's expense.

Note: Land may not be enrolled by the landowner who was responsible for the conversion; that landowner is ineligible to enroll in ACEP-WRE, in accordance with section 528.104A above.

528.106 Ineligible Land

A. General

The following land is not eligible for enrollment in the ACEP-WRE:

(i) Converted wetlands (180-NFSAM designations "CW" and "CW+year") if the conversion was commenced after December 23, 1985, except as noted above in section 528.105I(6).

(ii) Lands established to trees under a CRP contract, except as provided below in paragraph B(2) of this section.

(iii) Lands that would exceed the county cropland enrollment limitations tracked by FSA.

(iv) Lands owned by an agency of the United States, other than acreage owned by Indian Tribes.

(v) Lands owned by a State, including an agency or a subdivision of a State or a unit of local government.

(vi) Land subject to an easement or deed restriction that, as determined by NRCS, provides similar restoration and protection of wetland functions and values as would be provided by enrollment in ACEP-WRE.

(vii) Lands where the purposes of the program or implementation of restoration practices would be undermined due to onsite or offsite conditions, such as risk of

hazardous materials or petroleum products, permitted or existing rights-of-way, infrastructure development, or adjacent land uses.

(viii) Restoration, maintenance, management, or monitoring costs to the Federal Government that are determined to be excessive for the area or type of wetland.

(ix) Land that NRCS determines to have unacceptable exceptions to clear title or legal access that is encumbered, nontransferable, restricted, or otherwise insufficient.

B. Detailed Descriptions of Ineligible Land

(1) Converted Wetlands.—This refers to land that has been labeled as "CW" or "CW+year" as part of a certified wetland determination conducted for 180-NFSAM wetland compliance purposes.

(2) Lands Established to Trees Under CRP.—In general, lands established to trees under a CRP contract are not eligible, whether the contract is active or not. However, the State conservationist may determine these lands to be eligible if the application meets all other ACEP-WRE eligibility criteria and one of the following two conditions are met:

(i) Tree establishment has not been completed, a planted stand failed to become established, or a stand that was determined to be established subsequently failed. NRCS will determine and document if plantings failed or were established and failed.

(ii) The State conservationist determines and documents that the enrollment of such lands would further the purposes of the program based on all of the following criteria being met:

- The established cover conforms to ACEP-WRE restoration requirements.
- If the CRP contract is active, upon closing of the ACEP-WRE easement, the CRP contract for the property will be terminated or otherwise modified, subject to such terms and conditions as are mutually agreed upon by FSA and the landowner.
- Any additional criteria developed by the State conservationist.

Note: The basis for the NRCS decisions must be documented in the case file and a record kept of how many acres of lands established to trees under CRP are determined eligible and include such information in the easement business tool (e.g., NEST).

(3) County Cropland Limitation.—No more than 25 percent of the total cropland in any county, as determined by FSA, may be enrolled in CRP and in ACEP-WRE easements (ACEP-WRE easements include existing easements previously enrolled in WRP and Emergency WRP (EWRP)). In addition, no more than 15 percent of the total cropland in the county may be subject to easements acquired under ACEP-WRE. These limitations do not apply to areas devoted to windbreaks and shelterbelts after November 28, 1990, or to cropland designated by NRCS with "subclass w" in the land capability classes IV through VIII because of severe use limitations due to soil saturation or inundation.

(i) State easements acquired through the Conservation Reserve Enhancement Program (CREP) do not count against the easement limitation.

(ii) FSA maintains an electronic record of the acreage enrolled in ACEP-WRE and CRP at the county level. This record should be accurate to the extent that approved CRP contracts have been recorded in the system and NRCS has provided current data regarding ACEP-WRE enrolled easement acreage. For easement enrollments, NRCS is required to provide FSA the total acreage

enrolled and a map that identifies both the enrolled area and any exempt "subclass w" soils within the enrolled area.

(iii) FSA will determine the acreage it considers cropland on the nonexempt soils and update the CRP software with total cropland data accordingly. ACEP-WRE easements on noncropland acreage, as determined by FSA, or on cropland situated on exempted "subclass w" soils, as determined by NRCS, do not affect the cropland or easement limitation.

(iv) When calculating the total enrolled CRP acreage, the FSA software excludes CRP acreage that is scheduled to expire by the end of the current fiscal year. Before accepting new offers on cropland acreage in ACEP-WRE, the State conservationist must verify the current enrollment limits with FSA.

(v) NRCS and FSA must concur before a waiver of the 25-percent county cropland limit may be approved. Such a waiver will only be approved if the waiver will not adversely affect the local economy and if operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. Section 3812.

(vi) The State conservationist is responsible for determining whether a county cropland waiver will be requested. NRCS determinations must be submitted to the FSA State Committee for concurrence. FSA requires that the FSA national office review and approve requests in excess of 30 percent of the county cropland total.

(vii) Waiver requests submitted to FSA for concurrence must contain the following:

- Letters of recommendation from at least one county commissioner and representatives of the conservation district.
- Form AD-894, "Request for Cropland Waiver" (available from the local FSA office), with all items completed based on information received on Form AD-893, "Recommendation of Percent of Cropland to be Enrolled in CRP/ACEP-WRE."

(viii) Upon NRCS's request, FSA will distribute Form AD-893 to at least a 10 percent random sampling of the agricultural producers and groups listed on Form AD-894, items 26 and 27. FSA will forward responses received on Form AD-893 to NRCS.

(ix) The State conservationist may determine the level of interest in the county for waiving the cropland limitation for ACEP-WRE and the effect of a waiver on producers and businesses in the county based on the information received on Form AD-894. If a waiver would have significant adverse effects, the State conservationist may, with FSA concurrence, deny the request or lower the percent of cropland acreage limitation than recommended by the field office.

(x) There is no authority to waive the 15-percent limitation of ACEP-WRE easements on cropland.

(xi) States with counties that were previously at or near the 15-percent limit should review the soils information for those counties. NRCS should determine the ACEP-WRE easement acreage, including WRP and EWRP easements, enrolled on croplands that are on exempted "subclass w" soils and provide that information to FSA. At the State level, NRCS and FSA should determine the adjusted cropland enrollment percentages after excluding ACEP-WRE easement acres on cropland with exempted "subclass w" soils. NRCS should inform FSA at the local level that NRCS may be enrolling new ACEP-WRE easements in those counties.

(4) Land Subject to a Similar Easement or Deed Restriction.—Land that is subject to an easement, deed restriction, or other interest that, as determined by NRCS, provides

similar restoration and protection of wetland functions and values will be considered ineligible if NRCS determines one of the following:

(i) That ACEP-WRE enrollment will not provide significant additional resource protection to the wetland functions and values that would warrant expenditure of Federal funds.

(ii) That the existing easement, deed restriction, or other interest will interfere or restrict NRCS in its exercise of the rights to be acquired under the ACEP-WRE easement and existing easement, deed restriction, or other interest cannot be removed or subordinated.

(iii) That the existing easement, deed restriction, or other interest is held by another Federal agency, and a satisfactory agreement as to the respective rights of each agency cannot be reached and documented to the satisfaction of NRCS and OGC.

(5) Adverse Onsite or Offsite Conditions.—Offsite or onsite conditions that could undermine, preclude, or interfere with achieving program purposes or the successful implementation of restoration, as determined by NRCS, render the site ineligible. These adverse conditions may include, but are not limited to—

(i) The presence or potential presence of hazardous materials issues.

- If hazardous materials issues arise during the limited phase-I (record search, landowner interview, or NRCS field visits), NRCS may determine whether further investigation should be conducted or whether sufficient information exists to determine the site ineligible. Further investigation conducted by or paid for by NRCS is limited to a full phase-I environmental site assessment that meets the requirements of 40 CFR Part 312.
- OGC and EPD consultation is required if the State conservationist wishes to proceed with the acquisition of an easement with documented hazardous materials issues identified during any part of the limited phase-I record search, onsite field visits, landowner interview, or full phase-I assessment. NRCS, in consultation with OGC, will ascertain whether a combination of landowner response actions and liability protections provided to the United States can be established to allow the acquisition to continue.
- If NRCS determines that a phase-II environmental site assessment is needed, the land is ineligible. NRCS will not reconsider the site unless and until the State conservationist determines in consultation with OGC and EPD that the landowner has provided sufficient documentation that all necessary assessments have been completed and that the site has been fully remediated such that restoration or inundation of the site does not pose risk of hazardous waste contamination.
- NRCS will not enroll land that is or contains constructed wetlands used to treat wastewater or contaminated runoff.

(ii) Permitted or existing rights of way, either onsite or offsite, such as—

- Public or private drainage ways that will adversely affect the long-term success of the restoration to an unacceptable degree.
- Existing or proposed infrastructure routes that introduce disturbances or risks that undermine the purposes of the easement.

(iii) Adjacent land uses that could impede complete restoration or prevent wetland functions and values from being fully restored, such as—

- Adjacent or nearby airports or military aviation facilities.
- High-density residential areas.
- Dumps, mining, or extraction facilities.
- Storm sewer, wastewater, feedlots, septic system, or other outlets.

(6) Impacts to Adjacent Lands.—The land is ineligible if the enrollment of the neighboring land is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling or are ineligible to participate.

(7) Other Conditions.—There may be other existing conditions that the State conservationist may determine warrant excluding enrollment of the proposed acres. These conditions include but are not limited to—

(i) Lands where water rights cannot be ensured for the easement duration and such rights are necessary to meet program restoration objectives.

(ii) Cultural resources or wetland-dependent endangered species are present, and restoration practices would have adverse long-term impacts on those resources.

(iii) Onsite or offsite deposition, erosion, or invasive species problems that cannot be reliably or cost-effectively addressed and may impact successful restoration of the site.

(iv) Easement boundary configurations that are not mutually acceptable to both NRCS and the landowner, such as if the landowner has purposely manipulated the offered acreage to create in-holdings, outparcels, landlocked adjacent landholdings, road rights-of-way through the easement, or other boundary configurations that NRCS determines may negatively impact the restoration, protection, management, monitoring, or enforcement easement area. Conversely, if the landowner is unwilling to exclude areas identified by NRCS as unacceptable based on a determination that including those areas will create an unacceptable risk, liability, maintenance, enforcement, or other issue.

(8) Excessive Restoration or Long-Term Costs.—Lands where the cost of restoration for the easement area will exceed the fair market value of the land are ineligible. This criterion may be waived by the State conservationist in situations in which it is documented that the restoration may be successfully accomplished without accumulating a long-term operation and maintenance cost burden to the program.

(9) Unacceptable Title or Access Issues.—Land that NRCS determines to have unacceptable exceptions to clear title or legal access that is encumbered, nontransferable, restricted, or otherwise insufficient are not eligible for enrollment. Ineligibility due to title encumbrances is not appealable. NRCS may request an opinion from OGC determining that the title is not satisfactory and stating the reasons why. Such issues may include but are not limited to—

(i) Existing easements, rights-of-way, leases, or other encumbrances limiting NRCS ability to restore, manage, monitor, or enforce the easement or contract area, such as a flowage easement that prohibits the reestablishment of trees or a public drainage easement that prevents hydrology restoration to a substantial degree.

(ii) Lands that have an existing Federal interest and the pre-existing interest that would purportedly result in a merger or extinguishment of the lesser estate based on operation of State law, the existing Federal interest is incompatible and will not be released or subordinated, or the existing Federal interest is compatible, but the agencies fail to reach and document agreement as to the treatment of the respective rights of each agency.

(iii) Lands that have severed mineral rights or gas and oil leases that have a high likelihood of having an adverse impact on the easement area and cannot be subordinated to the ACEP-WRE easement (see mineral matrix for NRCS easements in 440-Conservation Programs Manual (CPM), Part 527).

Note: When access to the proposed easement area is across a road under the jurisdiction of the U.S. Forest Service (USFS) across which the landowner has access for themselves, but is unable to secure sufficient legal access that is

unencumbered, transferable, and unrestricted, NRCS may be able to obtain for its own uses a long-term "Road Use Permit for Access to Conservation Easement" under the 2016 memorandum of understanding (MOU) between USFS and NRCS. Under these circumstances, States must consult with a national EPD realty specialist for specific assistance in determining whether the landowner's own access is sufficient to address easement purposes, if NRCS can secure access across the USFS roads for itself under the MOU, and if OGC will be willing to accept such access. With EPD concurrence, the application will not be determined ineligible due to lack of access and the State may proceed in processing the application. If the application moves forward, the State must also consult with the national EPD realty specialist throughout the agreement, road access permitting, and easement acquisition process. The "Road Use Permit for Access to Conservation Easement" must be documented on the certificate of use and consent, signed by USFS and the State conservationist, recorded in the real property records of any county in which the USFS road covered by the road use permit is located, and retained in the easement case file. (See subpart U of this part for the "2016 MOU between the USDA USFS and the USDA NRCS" and the "USDA USFS Template Road Permit for Access to Conservation Easement.")

(10) The State conservationist may determine, on a case-by-case basis and in consultation with FWS, OGC, and EPD, to enroll certain lands with evaluated risk conditions if it is determined the benefits warrant such enrollment and the conditions will not undermine, preclude, or interfere with achieving program purposes or the successful implementation of restoration. If such lands are determined to be eligible, individual appraisals are required to determine the easement compensation values for such lands unless the fair market values determined through an applicable areawide market analysis (AWMA) have been developed taking into consideration the presence of such conditions (see subpart M, section 528.122 of this part for additional detail).

528.107 Notification of Ineligibility

Applicants found to be ineligible for participation in ACEP-WRE will be notified in writing of their status and advised of any applicable appeal rights. Appeal rights can be found in 440-CPM Part 510, "Appeals and Mediation." Ineligibility may be the result of the lands not being eligible or the landowner not being eligible. (See subpart U of this part for a sample ineligibility determination letter.)

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart L – ACEP-WRE Ranking

528.110 Overview

The State conservationist will, in consultation the State technical committee (STC) and in coordination with U.S. Fish and Wildlife Service (FWS), develop evaluation and ranking factors to prioritize applications for enrollment in ACEP Wetland Reserve Easement (ACEP-WRE) based on—

(1) The likelihood of successful restoration of wetland functions and values, and maximizing wildlife benefits, taking into consideration the cost of restoration, protection, enhancement, maintenance, management, monitoring, and the cost of acquiring the easement or 30-year contract.
(2) The significance of the wetland functions and values.
(3) The duration of a proposed enrollment, with permanent easements being given priority over nonpermanent easements or 30-year contracts.

528.111 Establishing ACEP-WRE Ranking Criteria

A. Ranking Purpose and Process Overview

(1) The ranking process enables the State conservationist to prioritize enrollment offers by determining eligible applications that most merit enrollment. However, this process does not guarantee or entitle the applicant to funding.
(2) The State conservationist, with advice from the STC, establishes weighted ranking factors and any associated ranking pools in order to prioritize all eligible applications, considering the criteria described in this subpart. These ranking factors and pools must ensure priority is given to those eligible applications that provide the maximum wildlife benefits associated with restoration and protection of wetland functions and values, considering all associated acquisition and restoration costs and the duration of the enrollment. The weighting of ranking factors must result in a point spread sufficient to allow differentiation between applications.
(3) The State conservationist will ensure the ranking factors and ranking pools are documented, develop a process to collect data necessary to conduct ranking, ensure all eligible applications are ranked, and select eligible applications for funding.
(4) The State conservationist may develop multiple sets of ranking factors or establish ranking pools to address variability in wetland types offered for enrollment. The development of multiple sets of ranking factors or ranking pools may be necessary to facilitate enrollment of diverse wetland habitat types that otherwise may be difficult to compare within a single set of ranking criteria. Ranking pools also allow flexibility to ensure priority wetland habitat types that would not compete as well with other wetland habitat types may still be selected.
(5) These State-developed ranking factors will be made available to the public through the State's ACEP-WRE web page.

B. Ranking Criteria Overview

The ranking criteria for easements and 30-year contracts will emphasize—

(i) The environmental benefits of enrolling the land.

(ii) Cost effectiveness of enrolling the land to maximize the environmental benefits per dollar expended.
(iii) Whether the landowner or other person or entity is offering to contribute financially to the enrollment or restoration to leverage Federal funds.
(iv) The extent to which the purpose of the program would be achieved on the land.
(v) Other criteria identified by the Easement Programs Division (EPD).

C. Environmental Benefit Considerations

The ranking criteria will consider the wetland functions and values as defined in subpart T of this manual, and—

(i) The environmental benefits of enrolling the land, including but not limited to—
- Habitat that will be restored for the benefit of migratory birds and wetland-dependent wildlife, including the diversity of wildlife species that will be benefitted or the life-cycle needs that will be addressed.
- Habitat for threatened, endangered, or other at-risk species, including the planned extents and anticipated use of the restored habitats on the easement area, and diversity of at-risk species benefitted.
- Protection or restoration of native vegetative communities.
- Habitat diversity and complexity to be restored and protected on the enrollment area.
- Extent of wetland losses within a geographic area, including wetlands generally or specific wetland types.
- Proximity and connectivity to other protected habitats.
- Extent of adjacent beneficial land uses.
- Water quality protection or improvement.
- Attenuation of floodwater flows.
- Water quantity benefits through increased water storage in the soil profile or through groundwater recharge and consideration of proximity to impaired water bodies.
- Carbon sequestration.
- Improving climate change resiliency.

(ii) The extent to which the original hydrology can be restored.
- Hydrology restoration potential must comprise at least 50 percent of the potential points awarded for environmental benefit considerations.
- To receive hydrology restoration ranking points, hydrology restoration or enhancement practices must provide hydrologic conditions suitable for the needs of the native wetland-dependent wildlife species that occurred in the area and appropriate to support the wetland functions and values being restored or enhanced on the site, including those that existed prior to manipulation of the hydrology or as otherwise identified in the preliminary wetlands reserve plan of operations (WRPO).
- Hydrology restoration potential should be assessed based on physical site characteristics including—
  - Soil properties, such as soil texture, soil structure, and soil drainage classes.
  - Landscape features, such as geomorphic position, slope, and water table depths.
  - Flooding characteristics, including frequency, timing, duration, depth, and sources.

- The source of the hydrology, the degree and type of hydrologic manipulation, existing connectivity and barriers to connectivity with hydrology sources, and the extent to which the hydrology can be restored.
- To the extent surface water rights are required for the restoration of hydrology and will be provided by and secured by the landowner as a matter of land eligibility, the reliability and availability of the water delivered through such water rights, and the degree of reliance on such water rights to successfully restore hydrology, should be taken into account as a ranking consideration.

(iii) Duration of the enrollment, with priority given to permanent easements over nonpermanent enrollment options.

For nonpermanent enrollments, the ranking criteria may consider likelihood that the site will retain its habitat functions and values after the enrollment period ends, such as concurrent enrollment in a permanent easement held by a State agency or nongovernmental conservation organization that takes effect after the expiration of the 30-year ACEP-WRE.

D. Economic Considerations

(1) The ranking criteria include but are not limited to the following economic considerations:

(i) Estimated easement or 30-year contract cost per acre, if appropriate. As applicable, any voluntary landowner offer to accept a reduced per-acre easement value.

Note: Landowner selection of an enrollment option that pays less than 100 percent of the permanent easement value (e.g., a 30-year easement or a grazing reserved rights enrollment) does not constitute a landowner offer to accept a reduced easement value; the landowner offer must be lower than the easement value that the landowner would be entitled to based on the enrollment type.

(ii) Estimated restoration costs.

(iii) Partnership contributions from a landowner or other person or entity that reduce NRCS costs should be reflected positively in the ranking process. States must ensure NRCS payments are appropriately reduced based on the amount of the partnership contribution.

(iv) A cost-benefit comparison. Applications that have a lower cost per environmental benefit ratio will receive higher rankings.

(v) Potential near- and long-term management, repair, replacement, operation and maintenance costs, and monitoring.

(2) During the ranking process, cost factors may be estimated using comparable market value, geographic area rate caps, landowner offers, established restoration costs, and pledged contributions from a landowner or other person or entity.

E. Special Considerations

(1) States may also include special considerations in the ranking process, such as—

(i) Priority Geographic Regions.—The State conservationist, with advice from the STC, may give priority to certain geographic regions of the State where restoration of wetlands may better achieve State and regional objectives. Additionally, an easement offer in a priority geographic region may be accepted before other individual easement offers that rank higher but are outside the priority region. This policy provides an opportunity for the State conservationist,

with advice from the STC, to begin an ACEP-WRE initiative in an area that has been determined important for ACEP-WRE involvement.

(ii) Priority Wetland Habitat Types.—The State conservationist, with advice from the STC, may prioritize certain wetland habitat types to receive additional ranking consideration. Unique, rare, or declining wetland habitat types identified for protection and restoration may be identified and prioritized in the State's ranking criteria.

(iii) Applications in special water-quality target areas.

(iv) Creating contiguous wetland areas under easement protection, such as along river corridors or within drainage districts.

(v) Enhancing effective restoration of previously enrolled land.

(vi) Reducing habitat fragmentation and boundary management problems.

Example: In-holdings in the proposed easement area would potentially exhibit marginal wetland functions, but, if enrolled, would enable substantial restoration and enhancement of the remainder of the proposed easement area.

(vii) Promoting adjacent landowner participation.

(viii) Enhancing long-term protection of previously restored wetlands. When a wetland has previously been restored, but not fully protected by an easement, as described in subpart K, section 528.105G of this part, the restoration will be considered a positive attribute in the ranking process.

(ix) Excessive permitting requirements or permitting requirements that require excessive time to secure. Higher priority should be given to areas where successful restoration work will not be complicated by unusual permit problems or where such permit requirements have already been addressed (e.g., area and actions covered under existing regional permits, biological opinions, or specific categorical exclusions).

Example: If there are State or local permitting processes that are complex and lengthy, the site may not warrant further consideration. At a minimum, the impacts of the permitting process and requirements in terms of whether the site is in fact capable of being restored and maintained in accordance with program purposes or if it the land can be restored within the required timeframes, should be fully incorporated into the site consideration.

(x) The level of complexity for engineering design, practice application, and operation and maintenance.

(xi) The State conservationist, with advice from the STC, may elect to establish a minimum easement size to ensure program objectives are achieved, ensure easement management effectiveness, or improve program efficiency, as long as the minimum does not unintentionally exclude high-quality applications, such as critical habitat for endangered and threatened species, or prevent participation by limited-resource farmers and ranchers.

Note: For applications considered under the closed basin lake or pothole land eligibility criteria described in subpart K, section 528.105D of this part, the minimum parcel size of 20 contiguous acres is an eligibility criteria. For ranking purposes, the State conservationist may set a larger minimum easement size for such applications but may not establish a smaller minimum easement size.

(2) States are encouraged to include the technical considerations and parameters related to any special ranking considerations in their State-specific wetland restoration criteria and guidelines (WRCG).

528.112 Ranking Process

A. NRCS will conduct onsite field evaluations to determine land eligibility, conduct preliminary investigations, develop the preliminary restoration plan, and gather the information needed to complete the ranking. NRCS may conduct these onsite field evaluations with the landowner and FWS, when available. NRCS may also provide an opportunity for input from the State wildlife agency and the conservation district, to determine eligibility of the proposed enrollment area and develop the preliminary restoration plan and preliminary WRPO.

B. The following information and materials must be included in the State office file for each active eligible application (see subpart U of this part for a sample application checklist for submittal to State office):

(1) Application for participation in the ACEP-WRE
(2) Copies of the landowner and land eligibility information (see subpart K of this part)
(3) Completed ranking information

Note: States are encouraged to document in the easement case file, the landowner's acknowledgement of the completed ranking, as well as input from FWS, conservation district, and State wildlife agency representative, if provided.

(4) The amount of any voluntary landowner offer to accept a reduced per acre easement value, documented in writing and signed by the landowner.
(5) Pledges from the landowner or other person or entity to provide financial assistance that reduces NRCS costs. These pledges are generally for restoration activities and are separate from the landowner offer to accept a reduced per acre easement value.
(6) A completed "Landowner Disclosure Worksheet" to initially document any unrecorded encumbrances and assess the potential presence of offsite and onsite conditions that would prevent successful restoration or pose an unacceptable risk to NRCS (see subpart U of this part for landowner disclosure worksheet).
(7) Completed "Hazardous Materials Field Inspection Checklist" and "Hazardous Materials Landowner Interview" (see subpart U of this part for these two documents).
(8) National Environmental Policy Act documentation (Form NRCS-CPA-52, "Environmental Evaluation Worksheet").
(9) Other items specified on State application checklists, such as documentation of water rights.
(10) Plat map showing location and boundaries of offered area, access to the offered area, and any existing roads, powerlines, pipelines, rights-of-way, or other pertinent physical features identified.
(11) Preliminary WRPO, including—
  (i) A clear objective and understanding about desired outcome of restoration activities.
  (ii) An aerial plan map showing boundaries of offered acres, access right-of-way, existing land use, conservation practices, the location of planned restoration practices, planned habitats, and planned land use.
  (iii) List of planned conservation practices, measures and activities, estimated quantities, and estimated costs.
  (iv) A soils map.

Note: The preliminary WRPO will be the basis of the "Supplement to Agreement for the Purchase of Conservation Easement or 30-Year Contract for Preliminary Obligation of Restoration Funds" to complete the preliminary

obligation of restoration funds as described in subpart O, section 528.142B of this part.

C. Maps and practices identified in the preliminary WRPO and applicable worksheets will be developed using the appropriate agency planning tool (e.g., Conservation Desktop) and stored in the National Conservation Planning Database or other agency-approved conservation planning software.

528.113 Ranking and Selection

A. In general, eligible applications should be selected as prioritized based on the outcome of the ranking process. However, the State conservationist, in consultation with the STC, may establish priorities and circumstances under which the State conservationist may select eligible applications outside of a strictly applied ranked order. Circumstances that would warrant these selections may include but are not limited to the following:

(1) Large Project Size.—If an eligible, high-ranking but unusually large project would consume a disproportionate amount of a State's ACEP-WRE budget, the large project may be deferred until sufficient funds become available.
(2) Insufficient Funds.—If sufficient funds are not available to select the next-highest-ranked offering, such eligible high-ranking offerings may be passed over until the next fundable eligible application is reached.
(3) Augments Existing or Concurrent ACEP-WRE Acquisition Efforts in an Area.—Eligible applications that may not rank high on their own merits but will contribute to the benefits of an existing or pending easement may be prioritized. Specifically, enrollments that further effective restoration and function of existing ACEP-WRE lands, reduce habitat fragmentation by protecting and restoring contiguous areas, resolve boundary issues, contribute to management, eliminate inholdings, or serve as a necessary buffer.
(4) Rare, Unique, or Individual Wetland Habitats.—Allow for enrollment of wetland types that are ecologically significant but whose values may not be adequately captured through the established ranking pools.
(5) Emerging Issues.—Enrollment of specific wetland habitat types or habitats in targeted geographic areas may be warranted due to disasters, new science, or changing priorities when contribution to and consideration of these factors is not sufficiently captured in the established ranking pools.

B. All eligible applications must be ranked; however, eligible applications for unique projects may be selected outside of the normal rank order when the selection is warranted. These selections should be documented either through a separate rationale document or accounted for as a special circumstance captured within the ranking process itself. For example, ranking factors or ranking pools may be established to address "Special Circumstances or Initiatives" to allow points to be assigned, based on relative importance of the circumstance addressed by the application. Additionally, letters of support or supplemental documentation supporting the enrollment of unique projects may be included as supporting documentation in the case file.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart M – ACEP-WRE Enrollment and Acquisition

528.120 Overview

A. This subpart provides guidance on administrative activities, procedures, and policy related to the enrollment and acquisition of 30-year contracts, 30-year easements, and permanent easements under ACEP Wetlands Reserve Easement (ACEP-WRE) and provides references to the additional applicable policies located in 440-Consevation Programs Manual (CPM), Part 527, "Easement Common Provisions."

B. The enrollment and acquisition process proceeds after NRCS determines that the landowner and the land are eligible, and after the onsite visits, including ranking and preparation of the preliminary wetland reserve plan of operations (WRPO), have been completed. Upon NRCS's execution of the most current version of Form NRCS-LTP-31, "Agreement for the Purchase of Conservation Easement" (APCE), or Form NRCS-LTP-40, "Agreement to Enter Contract for 30-Year Land Use" (AECLU), the acres are considered enrolled in ACEP-WRE. (See subpart U of this part for the ACEP-WRE business process flow chart exhibit.)

528.121 Selection for Enrollment

A. General

(1) Applications are accepted on a continuous basis. The State conservationist may establish one or more application cutoff dates for evaluation, ranking, and funding consideration of those applications received before the cutoff date. The State conservationist may also implement a process to select applications for funding on a continuous basis if they meet threshold requirements established by the State conservationist, with input from the State technical committee (STC).

(2) All eligible applications must be ranked and placed in priority order based on such ranking, taking ranking pools into account. The State conservationist will select eligible applications for funding based on ranking priority, ranking pools, and allocations available for new enrollment.

Note: If an individual appraisal will be used to determine the fair market value of the land, a high-ranking, eligible application may be tentatively selected for funding and the appraisal procured in the fiscal year prior to the fiscal year in which the application may ultimately be enrolled through the execution of the agreement to purchase (APCE or AECLU forms). See paragraph B below for additional detail.

(3) In general, application selection should proceed in order of ranking; however, if the State does not have sufficient funds to approve the highest-ranked application on the unfunded list, the State may skip to the next-highest-ranked application for which it has sufficient funds. The State conservationist may choose to fund lower-ranked applications in unique circumstances, as identified by the State conservationist in consultation with the STC (subpart L, section 528.113 of this part).

(4) All eligible applications tentatively selected for funding but requiring an individual appraisal or eligible applications that are not selected or considered during a given evaluation period may be carried over to subsequent evaluation periods through the term of the Farm Bill in which the application was submitted, except for those

cancelled or determined ineligible. States must follow supplemental guidance issued by National Headquarters regarding consideration and selection of existing applications under a subsequent Farm Bill.

(5) Eligibility determinations must be valid for the fiscal year that the agreement to purchase (APCE or AECLU forms) is executed by NRCS.

B. Letter of Tentative Selection (Required Only for Projects Needing an Individual Appraisal)

(1) For eligible applications tentatively selected for funding, the State conservationist must send a letter of tentative selection if an individual appraisal is required. Use of the letter of tentative selection for applications that do not require an individual appraisal is not required but is recommended. The letter of tentative selection is sent to the landowner by certified mail with return receipt requested.

(2) The letter of tentative selection must clearly explain that this tentative selection does not bind NRCS or the United States to enroll the proposed project in ACEP-WRE, nor does it bind the landowner to continue with enrollment in the program. The letter must provide the list of materials that the landowner must provide to NRCS before NRCS may proceed with next steps in the enrollment process, such as obtaining an individual appraisal, and a deadline for submitting such materials. (See subpart U of this part for sample letter of tentative selection.)

(3) For applications tentatively selected for funding that require an individual appraisal, the landowner's acceptance of the tentative selection is required prior to NRCS proceeding with acquiring an appraisal and is indicated by the landowner's providing all of the required materials by the stated deadline. (See subpart U of this part for checklist of items to provide appraiser.)

Note: While an individual appraisal may be obtained in the fiscal year prior to enrollment, the effective date of an appraisal must be within 12 months of the date the agreement to purchase (APCE or AECLU form) is executed by the landowner and NRCS unless a shorter useful life is identified by the review appraiser. Once the agreement to purchase is executed by all required parties, the appraisal does not expire. If an approved appraisal has an effective date older than 12 months before the agreement to purchase is executed by all parties, the appraisal is expired and a new, approved appraisal is required before an agreement to purchase may be executed. (See appraisal and appraisal review guidance in 440-CPM, Part 527, Subparts E and F.)

(4) After NRCS has received the materials needed to proceed with enrollment, including as applicable an acceptable appraisal, and any needed eligibility determinations have been updated for the fiscal year of enrollment, NRCS may proceed with making an offer of enrollment to the landowners, as provided in paragraph C below.

C. Offer of Enrollment

After all eligibility and ranking determinations have been made and the easement or 30-year contract compensation value has been determined (see section 528.122 below), the State conservationist may select an application for funding and send an offer of enrollment letter to the landowner. The content of this letter depends upon the selected application's enrollment type, the actions necessary for the application to be considered enrolled in the program, and the amount of funds to be obligated. (See subpart U of this part for sample offer of enrollment letters.)

(i) Easements

- The offer of enrollment letter must clearly indicate that the application has been selected for enrollment and that NRCS is making an offer to purchase the easement for the estimated compensation amount indicated on the APCE form provided with the letter. (See subpart U of this part for sample offer of easement enrollment letter.)
- The letter must also indicate that continuing the enrollment process is contingent upon the landowner returning the APCE form with all appropriate signatures within the time period specified in the letter. Generally, the landowner is allowed 15 calendar days to sign and return the document. This deadline may be adjusted by the State conservationist, as necessary. Once the properly executed APCE form is returned by the landowner and signed by the State conservationist, the property is considered enrolled in ACEP-WRE and funds are obligated for the easement acquisition. If the APCE form is not properly executed and returned by the landowner within the required time period, the application must be cancelled.

  Note: If the landowner is going to secure the easement boundary survey in accordance with the procedure in section 528.123B below, then the survey funds may also be obligated at this time, but not prior to the execution of the APCE form.

(ii) Thirty-Year Contracts on Acreage Owned by Indian Tribes

- For 30-year contract enrollments, the letter must clearly indicate that the application has been selected for enrollment and that NRCS is making an offer to enroll the land in a 30-year contract for the estimated compensation amount indicated in the letter. The actual 30-year contract document and exhibits that are used depend on how the land is owned, specifically whether the lands are held in Tribal trust by the Bureau of Indian Affairs (BIA), are Tribal lands, allotted lands, or are individually held (see section 528.126 below). If the enrolled land is Tribal trust land held by the BIA, the BIA superintendent must also be notified of the contract compensation amount from NRCS. (See subpart U of this part for sample offer of 30-year contract enrollment letter.)
- The letter must indicate that continuing the enrollment process is contingent upon the applicant returning the AECLU form attached to the letter with all appropriate signatures, including any necessary Tribal council resolutions accepting the offer within the time period specified in the letter. This signifies that the landowner accepts the offered compensation. Generally, the landowner is allowed 30 calendar days to sign and return the document. This deadline may be adjusted by the State conservationist, as necessary.
- Once the properly executed AECLU form is returned by the landowner and signed by the State conservationist, the property is considered enrolled in ACEP-WRE and funds are obligated for the estimated 30-year contract compensation amount. If the AECLU form is not properly executed and returned by the landowner within the required time period, the application must be cancelled.

D. Agreement Execution and Extension

(1) For all enrollment types, the specific standard expiration dates are provided on the agreement to purchase (APCE or AECLU form). The most current version of the agreement to purchase form (APCE or AECLU) available at the time the offer of enrollment is made to the landowner must be used. The agreement to purchase may

be extended one time for a single 12-month period if agreed to by all parties and the one-time extension document is executed by all landowners and NRCS prior to the expiration of the agreement. NRCS must not sign the extension until the fiscal year after the agreement is originally signed. (See subpart U of this part for a sample APCE/AECLU extension letter.)

(i) For enrollments prior to fiscal year (FY) 2017, the standard expiration date of the agreement (APCE or AECLU form) is August 31 of the year following the fiscal year the agreement is entered into, and the agreement may be extended one time for a 12-month period until August 31 of the year no later than 2 fiscal years following the fiscal year the agreement is entered into.

Example: For an agreement entered into in FY 2016, the initial expiration date is August 31, 2017, and the extended expiration date is August 31, 2018. NRCS may not sign the extension prior to September 30, 2016.

(ii) For enrollments in FY 2017 and later, the initial standard expiration date of the agreement (APCE or AECLU) is February 15 of the second subsequent fiscal year following the fiscal year in which the agreement is entered into, and the agreement may be extended one time for a 12-month period until February 15 of the following fiscal year.

Example: For an agreement entered into in FY 2019, the original expiration date is February 15, 2021, and the extended expiration date is February 15, 2022. NRCS may not sign the extension prior to September 30, 2020.

Figure 528.M1 - ACEP-WRE Agreement to Purchase (APCE or AECLU) Standardized Expiration Dates and Extension Lengths

Fiscal Year of Agreement Execution	Initial Agreement Expiration Date (No extension)	Final Agreement Expiration Date (Fully executed extension)
FY 2014	August 31, 2015	August 31, 2016
FY 2015	August 31, 2016	August 31, 2017
FY 2016	August 31, 2017	August 31, 2018
FY 2017	February 15, 2019	February 15, 2020
FY 2018	February 15, 2020	February 15, 2021
FY 2019	February 15, 2021	February 15, 2022
FY 2020	February 15, 2022	February 15, 2023
FY 2021	February 15, 2023	February 15, 2024

(2) The standardized expiration dates in the agreement to purchase forms (APCE or AECLU) (August 31 for agreements enrolled prior to FY 2017 and February 15 for agreements enrolled FY 2017 and later) may not be changed.

(3) No additional or alternative extension lengths are authorized. States must inform landowners that these standard requirements may not be changed and are a condition of participation in ACEP-WRE. Standardized expiration dates and extension lengths assist NRCS in tracking expiration dates and extension deadlines, reduce the risk and incidences of improper payments on expired agreements, and inform the landowners from the outset of the full extent and limitations of the agreement.

(4) The extension of the agreement to purchase (APCE or AECLU) requires the mutual agreement of both NRCS and the landowner. NRCS is under no obligation to grant

the one-time extension of the agreement, and the extension of the agreement is not a program entitlement issue.

E. NRCS Delegation of Authority for Enrollment

The State conservationist may delegate, in writing, to the assistant State conservationist with responsibility for easement programs the authority to sign the following enrollment and enrollment-related documents: the APCE or AECLU forms; supplements to the APCE or AECLU forms for preliminary obligation of restoration funds or landowner procurement of easement boundary surveys; addendums or amendments related to land ownership as described below in section 528.121H(2) for corrections to landowners identified on the APCE or AECLU form; agreement to extend the easement duration; and any subsequent documents authorizing adjustments to the amounts obligated under any of the above-listed documents. No further delegation of this authority is allowed.

F. Expedited Delivery of Notification of Offer of Enrollment

To expedite the enrollment process, NRCS may deliver the offer of enrollment letter and the APCE or AECLU form for signature to the landowner in person or by email. NRCS must document in the case file the date the offer of enrollment letter and associated documents were delivered to the landowner. To minimize the potential for disputes, the landowner should sign an acknowledgement confirming the date they received the offer of enrollment and APCE or AECLU form for signature.

G. Applications Not Selected

(1) At the end of the fiscal year, applicants with eligible applications that were not selected for funding must be notified that their application will be deferred to the next fiscal year unless the applicant notifies NRCS in writing that their application should be cancelled.
   (i) Landowners may be notified by a letter, personal contact, or email. Notification must be documented in the case file, indicating a landowner's desire to cancel their application.
   (ii) The notification informs landowners wishing to cancel their application to notify NRCS promptly and in writing. The written request for cancellation and NRCS letter or other documentation of contact should be maintained with the application. (See subpart U of this part for a sample deferral letter.)

(2) If applications are carried forward into the next fiscal year, a new landowner eligibility determination must be completed.
   (i) In the easement business tool (e.g., the National Easement Staging Tool (NEST)), these will be considered promoted applications to the new fiscal year and numbered in a manner that facilitates the tracking of funds specific to that transaction.
   (ii) Applications may be carried forward for the term of the Farm Bill under which the application was submitted; if the landowner wishes to participate after this time period has expired, the submission of a new application may be required.

H. Documenting Landowner Changes After Enrollment

(1) Preacquisition: Transfer or Sale of Land Under an Active Easement Purchase Agreement
   (i) Any land enrolled in ACEP-WRE under an active, unexpired easement purchase agreement (APCE or AECLU) that is sold or transferred by any or all landowners of record (including the current landowner entering into a contract to sell the land subject to the ACEP-WRE offer) prior to the easement being perfected or the 30-

year contract being executed results in the APCE or AECLU being terminated and the acres removed from enrollment unless the new landowner meets the eligibility requirements in subpart K, section 528.103 of this part, and is willing to accept the terms and conditions of the enrollment.

(ii) The evidence for the sale or transfer of fee or title interest to land subject to an active easement purchase agreement is a new deed of ownership (or contract for sale or other evidence of ownership document) dated after the date the APCE or AECLU form was executed by NRCS.

(iii) Before a new landowner may proceed with enrollment into ACEP-WRE, they must request an eligibility determination, including submission of any necessary documents and waiver requests, must be determined eligible, and must execute the Form NRCS-CPA-1253, "Transfer of Purchase Agreement for Easement Programs" (TOPA) and any other documentation requested by NRCS to ensure eligibility of the transferee or to further program implementation. The landowner must meet all landowner eligibility criteria for the fiscal year in which the NRCS will execute (sign) the TOPA form. NRCS will execute the TOPA form only after all landowners have been determined eligible and have signed the TOPA form. (See subpart U of this part for the Form NRCS-CPA-1253.)

(iv) If the change in ownership of property enrolled in ACEP-WRE under an active easement purchase agreement is the result of the death of the landowner (transferor) prior to the easement closing, the current landowner portion of the TOPA must identify the decedent or their estate and be signed by an appropriately authorized representative. Information, such as the last will and testament, court orders, affidavit of heirship, trust agreements, or other legal documents, may be needed for NRCS, in consultation with the Office of General Counsel (OGC), to establish signatory authority for the appropriately authorized representative of the deceased individual.

(v) If the current landowner (transferor) or the new landowner (transferee) is unwilling or unable to execute the TOPA or the new landowner is unable to establish eligibility for the fiscal year in which the TOPA is to be executed by NRCS, then the TOPA must not be executed by NRCS, and the original APCE or AECLU must be terminated and the acres removed from enrollment. The original parties to the easement purchase agreement must be notified of the decision to terminate the easement purchase agreement and any cost recovery actions that will be taken and provided appeal rights. The easement purchase agreement must be terminated within 30 days of such notification or after the conclusion of any exercised appeal options. The new landowner may submit a new application in the future, at which time a new eligibility determination must be made. (See subpart U of this part for example APCE/AECLU termination letter.)

(vi) If the TOPA is executed by all required landowners and NRCS, the obligation of acquisition funds in the Financial Management Modernization Initiative (FMMI) and the landowner identification and ownership shares in the easement business tool (e.g., NEST) must then be updated to reflect the actual ownership and ownership shares based on the most current evidence of land ownership. As soon as possible after execution of the TOPA, a copy must be provided to the appropriate financial specialist to make the adjustments in FMMI.

(vii) A copy of the fully executed TOPA document must be included in any prepayment internal control review document packages.

(viii) The TOPA may only be used if the fee or title interest ownership to the land is transferred or sold after the easement purchase agreement is executed by NRCS.

If there has been no change in fee or title interest ownership of the land under an active easement purchase agreement, but the correct landowners did not sign the easement purchase agreement, follow the procedure described below in paragraph H(2) of this section to correct the easement purchase agreement itself and the associated FMMI obligations and easement business tool (e.g., NEST) records.

(ix) The TOPA form is only to be used for the transfer of an active, valid, unexpired purchase agreement (APCE or AECLU form). The TOPA form is not to be used if the easement purchase agreement is expired or if the easement is closed or the 30-year contract has been executed.

(2) Preacquisition: Corrections to Landowner Acknowledgments Under an Active Purchase Agreement

(i) Any land enrolled in ACEP-WRE under an active, unexpired easement purchase agreement must have the APCE or AECLU form updated where it is discovered, prior to easement closing or 30-year contract execution, that the original APCE or AECLU form does not identify correctly or accurately all of the landowners that held a fee or title interest in the subject property at the time the APCE or AECLU form was executed, and have at all times since that execution continued to hold that same fee or title interest in the subject property. Based on the enrollment type (easement or 30-year contract) the update to the APCE or AECLU form must be documented using the appropriate "Addendum to Add Newly-Identified Landowner" or the "Amendment to Correct Landowner Acknowledgements." (See subpart U of this part for these documents.)

(ii) The "Addendum to Add Newly-Identified Landowner" and the "Amendment to Correct Landowner Acknowledgments" are only to be used if the fee or title interest ownership of the subject property itself has not changed after the easement purchase agreement was fully executed.

(iii) To minimize the occurrences of these corrections, it is imperative that NRCS obtain the preliminary title commitment, title report, or equivalent title evidence prior to executing the easement purchase agreement as described in subpart K, section 528.103E of this part. NRCS must compare the land ownership information from such preliminary title documents with the evidence of ownership documentation provided by the landowner during the application process. All known landowners must have eligibility determinations complete prior to executing the APCE or AECLU. NRCS relies on the most current ownership documents to identify correctly and accurately all of the fee or title interest landowners at the time the APCE or AECLU is executed. If the preliminary title commitment, title report, or equivalent title evidence is not obtained prior to executing the APCE or AECLU, NRCS and the landowner must make every effort to review the available records to ensure that the landowner eligibility determinations and the identification of the landowners on the APCE or AECLU form completely and accurately reflects the fee or title interest ownership of the subject property at the time the easement purchase agreement is executed.

(iv) Addition of Newly Identified Landowners Only

- If NRCS discovers that there are landowners of record that are not party to the APCE or AECLU that held a fee or title interest in the subject property at the time the APCE or AECLU was executed and have at all times since that execution continued to hold that same fee or title interest in the subject property, such newly identified landowners must have their eligibility

reviewed and determined in accordance with subpart K, section 528.103 of this part for the fiscal year the APCE or AECLU was originally executed.

- If the newly identified landowners are determined eligible, then the "Addendum to Add Newly Identified Landowner" (addendum) must be signed by the newly identified landowners. Once properly executed by all required newly identified landowners, the addendum may then be executed by NRCS.
- The "Addendum to Add Newly Identified Landowner" is only to be used if the only change is the addition of a newly identified landowner as described above. The original landowners identified on the APCE or AECLU do not sign the addendum but should be provided a copy once executed by the newly identified landowner and NRCS.

(v) Corrections to Landowner Acknowledgements for Addition, Removal, or Other Change

- If NRCS discovers that the APCE or AECLU form does not correctly or accurately identify all of the landowners of record that held a fee or title interest in the subject property at the time the APCE or AECLU was executed and have at all times since that execution continued to hold that same fee or title interest in the subject property, the APCE or AECLU form may be corrected through the completion and execution of the appropriate "Amendment to Correct Landowner Acknowledgements" (amendment).
- The "Amendment to Correct Landowner Acknowledgments" may be used to address the following corrections to the identification of landowners on the APCE or AECLU form:
  - To remove any landowner incorrectly included in the APCE or AECLU form.
  - To correctly document the capacity in which a landowner identified on the APCE or AECLU form actually held and holds the fee or title interest to the subject property (e.g., signed as an individual, but actually holds title as a trust).
  - To add a newly identified landowner (when that is not the only change).
- All landowners identified on the amendment who were not identified or were identified differently on the APCE or AECLU form must have their eligibility reviewed and determined in accordance with subpart K, section 528.103 of this part for the fiscal year the APCE or AECLU was originally executed.
- The "Amendment to Correct Landowner Acknowledgements" must be signed by all of the parties identified as landowners on the original APCE or AECLU form and all of the parties identified as landowners on the amendment. Once properly executed by all required landowners, the amendment may then be executed by NRCS.

(vi) If all of the required landowners are unwilling or unable to execute the addendum or amendment or are unable to establish eligibility for the fiscal year of enrollment, then the addendum or amendment must not be executed by NRCS, and the original APCE or AECLU must be terminated and the acres removed from enrollment. The original parties to the easement purchase agreement must be notified of the decision to terminate the easement purchase agreement and any cost recovery actions that will be taken and provided appeal rights. The easement purchase agreement must be terminated within 30 days of such notification or after the conclusion of any exercised appeal options. The

landowners may submit a new application for participation in the future, at which time a new eligibility determination must be made. (See subpart U of this part for example APCE/AECLU termination letter.)

(vii) The easement purchase agreement addendum or amendment documents described in this section are only to be used to make corrections to an active, unexpired purchase agreement (APCE or AECLU). The easement purchase agreement addendum or amendment documents are not to be used if the APCE or AECLU is expired or if the easement is closed or 30-year contract has been executed.

(viii) If the above requirements are met and an easement purchase agreement addendum or amendment is fully executed by all required landowners and then executed by NRCS, the obligation of acquisition funds in FMMI and the landowner identification in the easement business tool (e.g., NEST) must be updated to reflect the actual ownership and ownership shares based on the most current evidence ownership documents. As soon as possible after execution of the addendum or amendment, a copy must be provided to the appropriate financial specialist to make the adjustments in FMMI.

(ix) A copy of the fully executed addendum or amendment document must be included in the prepayment internal control review documents packages.

(x) Under no circumstances may an easement purchase agreement addendum or amendment be used if the fee or title interest ownership of the land has changed after the easement purchase agreement was executed by NRCS as the result of a land transfer, which includes a transfer as result of the death of the original landowner. The procedure for a preacquisition transfer or sale of land described above in paragraph H(1) of this section must be used.

(3) Preacquisition: Changes in Composition of a Landowner-Legal Entity Under an Active Easement Purchase Agreement

(i) For land enrolled in ACEP-WRE under an active, unexpired easement purchase agreement (APCE or AECLU) with a landowner that is a legal entity or general partnership, the eligibility of the landowner-legal entity and any required members is determined at the time of enrollment in accordance with subpart K, section 528.103 of this part. The adjusted gross income (AGI) determination, including an approved AGI waivers, for the landowner-legal entity at the time of enrollment remains in effect for the duration of the enrollment unless there is a change in the membership of the landowner-legal entity. The highly erodible land/wetland conservation (HELC/WC) eligibility is determined at the time of enrollment and again at the time of each payment.

(ii) Changes in the membership of a landowner-legal entity must be documented by the landowner-legal entity submitting a revised Form CCC-901, "Member's Information," or CCC-902E, "Farm Operating Plan for an Entity," to the Farm Service Agency (FSA). The terms of the Form CCC-901 or CCC-902E require the landowner-legal entity to provide timely written notification to FSA of any changes in the information provided on the Form CCC-901 or CCC-902E, including changes in the composition of the entity.

(iii) Prior to payment, NRCS must check the most current Form CCC-901 or CCC-902E on file with FSA to determine if there has been a change in entity membership since the time of enrollment. If there has been a change in the entity membership since the time of enrollment, the landowner-legal entity and any new members of that entity must submit the documentation required to determine AGI and HELC/WC eligibility and must be determined AGI and HELC/WC eligible by FSA for the fiscal year in which the easement or 30-year contract

payment will be made. The eligibility for the landowner-legal entity and any new members must be determined to confirm that the landowner-legal entity is still eligible and whether any commensurate reductions for AGI must be applied to the easement or 30-year contract payment. If a landowner-legal entity has an existing AGI waiver and the only change is to the landowner-legal entity membership, and FSA determines the landowner-legal entity includes members that do not meet the AGI provisions, the existing AGI waiver can be used. If a landowner-legal entity, including all required members, met the AGI limitation at the time of enrollment but due to changes in its entity membership is subsequently determined by FSA to not meet the AGI provisions, such landowner-legal entity may request an AGI waiver at the time the revised AGI determination is made (see subpart K, section 528.103C of this part). HELC/WC will be rechecked for the landowner-legal entity for each fiscal year in which a payment is to be made.

(iv) It is not necessary to complete a "Transfer of Purchase Agreement" or an addendum or amendment to the APCE or AECLU if only the membership of the landowner-legal entity has changed. It is necessary for the landowner-legal entity and all entity members to submit updated eligibility paperwork even if there is an existing approved AGI waiver.

(4) For each scenario described above, if the landowner is a legal entity or general partnership, NRCS must notify the landowner if the applicable AGI eligibility determination requires a commensurate reduction to the easement or 30-year contract payment, unless a waiver of the AGI limitation is requested by the landowner-legal entity and granted by NRCS in accordance with subpart K, section 528.103C of this part. This notification should also identify the commensurately reduced amount that may be issued at the time of payment if such AGI waiver is not requested or is not granted by NRCS. (See subpart U of this part for sample letter notifying landowner of commensurate reduction.)

(5) If the specific circumstances of a landowner change after enrollment are outside of the scenarios identified in this section, States must contact the Easement Programs Division (EPD) for guidance on whether the change may be made and how it must be documented.

(6) Postacquisition: Transfer or Sale of Land After Easement Closing or 30-year Contract Execution

(i) If there are changes in fee or title ownership after an easement has closed, the land remains subject to the easement, and the ownership changes are a matter of public record. The Form NRCS-CPA-1253 (TOPA) and the conservation program contract transfer agreement (Form NRCS-CPA-152, "Conservation Program Contract Transfer Agreement") are not used for this purpose. Documentation of changes in ownership of an existing easement should be based on new evidence of ownership documents provided by the new landowners or obtained by NRCS. Requirements for documenting changes in ownership after the easement has closed or the 30-year contract has been executed are in subpart O, section 528.143D of this part and in 440-CPM, Part 527, Subpart P.

(ii) Form NRCS-CPA-152, "Conservation Program Contract Transfer Agreement," must be used to document any transfers of a conservation program contract (CPC) if there is a subsequent change in land ownership after the easement has closed and there is an active CPC in place for restoration (see subpart O for additional information on CPCs for restoration).

(iii) For lands under an existing contract for 30-year land use, the Form NRCS-CPA-152 must be used to document any transfers of land ownership. In accordance

with the terms of the 30-year contract, if the new landowner is unwilling to accept the terms of the existing 30-year contract, the prior landowner may be required to repay NRCS (see subpart O, section 528.147 of this part for additional information).

I. Withdrawal of Offer by NRCS

Prior to execution by the United States of the warranty easement deed or 30-year contract, NRCS may withdraw the land from enrollment at any time due to the lack of availability of funds, inability of landowner to provide clear title or sufficient legal access, sale of the land, or for other reasons. The offer to the landowner is void if not executed by the landowner within the time specified. States must enter the expiration or cancellation date of the agreement in the easement business tool (e.g., NEST).

J. Failure to Convey and Cost Recovery

(1) Except for reasons beyond the control of the landowner (as determined by NRCS), if the landowner fails to convey the easement or 30-year contract, the landowner is in default of the terms and conditions of the APCE or AECLU and may be required to pay NRCS the amount of costs incurred by NRCS for surveys and all other actions taken in furtherance of the agreement or contract.

(2) The State conservationist has the discretion to determine the extent of costs to be recovered and whether any portion of those costs will be waived. This determination will be based on an evaluation of the landowner's reason for nonconveyance and NRCS funds expended in an effort to perfect the easement or execute the 30-year contract. For example, if the landowner demonstrated a good-faith effort by working extensively with a lien holder but the lien holder was unwilling to subordinate the lien.

528.122 Determining Easement or 30-Year Contract Compensation

A. General

(1) The requirements contained in this section and exhibits are mandatory for all ACEP-WRE easement or 30-year contract acquisitions by NRCS. No modifications to these requirements are permitted without prior written approval from the Deputy Chief for Programs.

(2) The basis for the compensation offer for an easement or 30-year contract enrollment is the lowest of the following:

(i) The fair market value of the land using either of the following:

- A Uniform Standards for Professional Appraisal Practices (USPAP) appraisal (see section 528.122C below).
- An areawide market analysis (AWMA) (see section 528.122B below).

(ii) The geographic area rate cap (GARC) (see section 528.122D below).

(iii) An amount voluntarily offered by the landowner (see section 528.122E below).

(3) In order to comply with the statutory provisions regarding easement and 30-year contract compensation, States must determine the fair market value of the land, the GARC value, and the landowner offer (if any) for each transaction prior to enrollment. The easement compensation value must not exceed the fair market value of the land.

(4) The State conservationist must determine whether to use an AWMA or a USPAP appraisal to determine the fair market value of the land offered for enrollment. Only one method may be used to determine the fair market value of the offered area.

Note: For ACEP-WRE, the AWMA or USPAP appraisal is used to determine the fair market value of the land as required by statute. This is in contrast to ACEP-ALE, which requires the USPAP appraisal or AWMA to determine the fair market value of the easement, which requires a determination of the fair market value of the land unencumbered by the ACEP-ALE easement (before value) and the fair market value of the land encumbered by the ACEP-ALE easement (after value) in order to determine the value of the conservation easement (before value minus after value). Under ACEP-WRE, the AWMA or USPAP appraisal does not include a determination of the 'before value' or 'after value' of the land or the value of the conservation easement itself.

(5) Obtaining an AWMA is the preferred method for determining fair market value of the land, if the characteristics of the land are homogenous enough to provide fair market values applicable to the land uses and types in the identified market area and sufficient enrollment of such lands is anticipated. The fair market values derived from the AWMA provide a primary source of information for use in the development of the associated GARCs. Use of an AWMA to determine fair market value and subsequent development of the associated GARCs allows easement or contract compensation values to be reliably estimated early in the process. This enables NRCS to inform potential participants of the compensation values early in the evaluation process and reduces the time spent with applicants who will not accept the compensation offer.

(6) The compensation amount provided by NRCS for less-than-permanent enrollments, including easements with durations limited by State law, 30-year easements, or 30-year contracts, must not exceed 75 percent of the easement compensation value determined for a permanent easement according to this subpart. Less-than-permanent enrollments may not be of sufficient duration to achieve full restoration, and do not provide permanent protection of the functions and values obtained.

B. Fair Market Value of the Land Using an Areawide Market Analysis

(1) State conservationists may obtain one or more AWMAs to establish the fair market value of various lands that are typically enrolled within the State. States may establish multiple market areas to be analyzed, based on counties or other sub-State regions, land uses, land quality categories, soils or crop types, or other considerations, such as development pressure and residual recreational value.

(2) To obtain an AWMA, the State conservationist must first define the market area or areas to be analyzed, based on similar features, including but not limited to the following:
(i) Land uses
(ii) Land productivity
(iii) Land unit size
(iv) Soil types and features
(v) Types and amounts of improvements
(vi) Potential influence of other factors, such as development pressure
(vii) General topography and natural features
(viii) Location
(ix) Irrigation water rights
(x) Common recorded or unrecorded encumbrances

(3) The AWMA results should provide fair market value for the types of land typically enrolled or eligible to be enrolled in ACEP-WRE in the NRCS-identified market areas.

(4) The AWMAs will be completed by an independent real estate professional familiar with the area, land use types, and other characteristics included in the market area or areas defined by NRCS. The qualifications required of the independent real estate professional are identified in the AWMA specifications and statement of work. The AWMA is not to be completed by NRCS personnel. The AWMA specifications must be reviewed with the selected real estate professional, including specific types of land, land uses, and other characteristics to be cited in the report based upon land typically enrolled in ACEP-WRE.

(5) The AWMA must be completed in accordance with the specifications provided by NRCS. (See subpart U of this part for the ACEP-WRE AWMA specifications and statement of work.) The qualified independent real estate professional conducting the market analysis must provide a written report to the State conservationist consistent with the requirements in the specifications and statement of work. The AWMA report must document—

(i) The region, market areas, development potential, and land use or land productivity categories and subcategories analyzed.

(ii) The actual sales data or economic data for each category and subcategory.

(iii) The source of the data.

(iv) Limitations in the application of the values identified in the market analysis.

(v) The qualifications and experience of the qualified real estate professional who conducted the market analysis.

(6) The AWMA areas or categories must be adequately specific and descriptive. For example, land use categories, such as irrigated pastureland or irrigated cropland, will result in more accurate data than a category of irrigated land used for both. For GARCs developed based on an AWMA, the description of the GARC areas or categories should be consistent with the associated AWMA categories.

(7) The qualified real estate professional may contact the contracting officer and suggest modifications to the market area, land uses, or other attributes of the land included within a market area, if they determine that there is insufficient data available to conclude typical values for the market area or land uses as identified by NRCS. An NRCS national appraiser may be consulted for guidance in making changes to market areas or land uses. The contracting officer or NRCS national appraiser may also consult with the State easement specialist. The contracting officer will provide guidance to the contractor after consultation and concurrence to the modification from either an NRCS national appraiser or State easement specialist.

(8) NRCS will obtain the AWMAs through an appropriate procurement method and following proper contracting rules and procedures. Review and acceptance of the AWMA must be completed by an authorized official prior to submission to the EPD for approval. For the purposes of AWMA review, an authorized official is the FPAC-BC or NRCS contracting officer, in consultation with the State easement specialist as needed, or the agency contact identified in an agreement if the AWMA is procured through a cooperative agreement.

(9) The State conservationist must submit an electronic copy of the AWMA report and accompanying documentation, including the date the fair market values were reviewed with the STC, to the EPD director for final concurrence and approval. These will be submitted at the same time the proposed GARCs are submitted.

(10) All fair market value determinations using AWMAs must be reviewed for each enrollment fiscal year and have EPD director approval prior to being used in the enrollment process. If no significant changes are anticipated in the AWMA fair market values from the previous fiscal year, States may obtain a review and written statement from the original qualified real estate professional who prepared the

previous fiscal year's AWMA documenting that the previous fiscal year's AWMA fair market values have not changed significantly (no more than plus or minus 10 percent) and are still valid. The statement must explain the process used by the qualified real estate professional to make the determinations. If it is confirmed and documented that there are no significant changes, the State conservationist may request approval from the EPD director to use an extension to the prior fiscal year's AWMA rather than obtaining a new AWMA report for that fiscal year. The AWMA fair market values must remain the same and the applicable GARC values must remain at the same value or lower as the previous fiscal year. An AWMA may only be reviewed and extended for 1 fiscal year following the original AWMA report. (See subpart U of this part for a sample statement of work and specifications for a review of WRE areawide market analysis.)

C. Fair Market Value of the Land, Using an Appraisal

(1) An individual USPAP appraisal may be used to determine fair market value of the land instead of AWMA. Use of individual appraisals may be warranted for reasons that may include but are not limited to the following:
  (i) States with limited ACEP-WRE enrollment.
  (ii) Areas with limited enrollment within a State.
  (iii) Areas with significant complexity that do not allow for a more general evaluation—for example, property-by-property value differences due to water rights or extreme variability in values over a small area due to development pressure.
  (iv) Land uses or areas not included in the market areas of the AWMA—for example, the property is geographically located within an AWMA market area (Smith County) but does not contain one of the analyzed land uses (offered area is irrigated cropland but only rangeland was included in the AWMA).
  (v) Properties possessing characteristics that significantly deviate from those used to develop the AWMA values such that the deviating characteristic is likely to have an effect on value and render the AWMA value inapplicable to that particular property, such as:
    - The size of the property is beyond the scope of the parameters identified in the AWMA values,
    - The property has existing encumbrances that would not be removed or subordinated as part of the easement acquisition process and are beyond those considered common or typical or otherwise taken into account in determining the AWMA values, or
    - Access issues beyond the typical conditions used to develop the AWMA values.
  (vi) Other special situations.

(2) Guidance for conducting appraisals and appraisal reviews is located in 440-CPM, Part 527, Subparts E and F.

(3) If an individual appraisal is used to determine fair market value, a percentage GARC and not-to-exceed dollar value are required.

D. Geographic Area Rate Caps (GARCs)

(1) Each fiscal year, the State conservationist, in consultation with the STC, must adopt at least one GARC for their State.
  (i) States may establish multiple GARCs based on counties or other sub-State geographic regions, land use or quality categories, corresponding AWMA areas,

or other considerations, such as development pressure and residual recreational value.

(ii) GARCs for each State should be set at a rate that does not overcompensate landowners and that encourages the enrollment of the types and classes of lands with superior restoration potential. **GARCs should reflect the value that the State conservationist determines to be fair compensation for the rights being acquired**. Although NRCS is acquiring a majority of the property rights associated with the land, the landowner still retains certain reserved rights; as a result, GARCs will always be less than the fair market value of the land as determined by the AWMA or appraisal.

(2) In order to establish GARCs, States should use the best readily available information to determine fair compensation for the rights being acquired through the easement or 30-year contract. The best data source is the fair market value determined in the corresponding AWMAs. Other data that should be used to develop GARCs include—

(i) Data sets of previously obtained ACEP-WRE appraisals.
(ii) Local real estate market values, tax rates, and assessments.
(iii) Location of the land.
(iv) Soil types and productivity.
(v) National, State, or local agricultural statistics.
(vi) Local information about the value of land leases for the rights being acquired by the Federal Government.
(vii) Historic values accepted and rejected by landowners for program participation.
(viii) Rates paid by other conservation easement programs that have similar purposes.
(ix) Neighboring geographic areas.

Note: GARCs must not have the effect of eliminating types or classes of lands on which the wetland and wildlife restoration potential is superior to other types or classes of lands enrolled in the State.

(3) If AWMAs are used to determine fair market value, specific GARC dollar values should be established that correspond to the AWMA categories and subcategories. If USPAP appraisals are used to determine fair market value, the GARC must be set as a percentage of fair market value and must include a not-to-exceed dollar value.

(4) The State conservationist must document the following in writing:

(i) The process used to determine the area for each GARC.
(ii) The process and rationale used to determine the dollar or percent value of each GARC.
(iii) The geographic area, development potential, land use, land productivity categories, or other characteristics considered.
(iv) The corresponding GARC from adjacent States with an explanation of any significant (20 percent or more) differences.
(v) The sources of the data.
(vi) The date the proposed GARC values were reviewed with the STC.
(vii) For GARCs greater than $5,000 per acre, an evaluation and justification of the ecological importance of enrolling these high-cost lands.

(5) Each fiscal year, the State conservationist must submit an easement compensation proposal package that includes a discussion of the approaches used to obtain fair market values (AWMA, appraisals, or combination), copies of any AWMA reports, the proposed GARCs, and the supporting GARC rationale documentation. The

proposal must be submitted to the EPD director for final concurrence and approval. Easement compensation proposals will be evaluated on the following criteria:

(i) Was there a logical, defensible, and well-documented process?

(ii) Was the AWMA procured from a qualified real estate professional with experience in the market area?

(iii) Is the fair market value of the land greater than the GARC?

(iv) Were the results reviewed by the STC?

(v) Were the results certified by the State conservationist?

(vi) Were the GARC values consistent with neighboring areas or were there explainable differences?

Note: Neighboring GARC values with a variation greater than 20 percent may only be approved when they are accompanied by a statement from the State conservationists explaining why neighboring GARC values vary so greatly.

(vii) For GARCs greater than $5,000 per acre, is there a statement from the State conservationist justifying the ecological importance of enrolling these high-value lands?

(6) All easement compensation proposals must be updated each fiscal year and have the written approval of the EPD director prior to being used in the enrollment process. Upon approval, States publish the GARC values on the NRCS State web site for informational purposes.

E. Landowner Offer

(1) At any time during the application or prior to easement closing or 30-year contract execution, the landowner may voluntarily offer to accept a value less than that being offered by NRCS. If the landowner makes an offer, such offer must be provided in writing by the landowner. The written landowner offer must be uploaded into the easement business tool (e.g., NEST) with the document type "Landowner Offer" together with all applicable data fields entered, and a physical copy must be placed prominently in the case file.

(2) The offer from the landowner must be on a per-acre basis for all or a portion of the proposed easement or 30-year contract area and NRCS must explain to the landowner that the final easement or 30-year contract compensation amount will be adjusted based on the final surveyed acres multiplied by the per-acre landowner offer amount, in accordance with the terms of the APCE or AECLU.

Example: For a 100-acre easement with an applicable GARC value of $1,000 per acre, the landowner may offer to accept $800 per acre for the entire easement area, which would result in an easement compensation value of $80,000. Alternatively, the landowner may offer to accept $0 per acre for 10 acres within the easement area and accept the $1,000 per acre GARC value for the remaining 90 acres, which would result in an easement compensation value of $90,000. Either offer is acceptable as it is lower than the $100,000 easement compensation value based on the GARC rate alone.

(3) All land enrolled in ACEP-WRE must meet all program requirements irrespective of whether the landowner offers to enroll all or a portion of the land at a reduced cost or at no cost to NRCS. As determined by NRCS, all eligibility, due diligence, valuation, and other requirements of this part must be met on the entire area that will be encumbered by the easement or subject to terms of the 30-year contract.

(4) If the landowner's offer is made at the time of application and ranking, this may be included as a positive attribute in the ranking score. A landowner's willingness to

accept a lower easement or 30-year contract compensation amount does not ensure an application will be selected or otherwise grant a landowner expedited access to the program.

F. Making an Offer

(1) Once NRCS has calculated the appropriate easement or 30-year contract compensation value for a particular transaction based on the enrollment type, it may make an offer to an eligible landowner using the APCE, or for acreage owned by an Indian Tribe, the AECLU. The offer will be made based on the lowest of the following:
   (i) The fair market value of the land, as determined by the individual USPAP appraisal or AWMA.
   (ii) The GARC.
   (iii) The landowner's offer.

(2) States must document in the individual case file how the compensation value was determined for each individual offer. This documentation may include maps or tables and must identify the enrollment type, the total acres, the number of acres of each applicable fair market value (FMV) and GARC category, the per-acre values of each applicable FMV and GARC category, the total easement compensation value, and the total weighted per-acre easement value. (See subpart U of this part for an example easement compensation calculation worksheet.)

Example:

FMV/GARC Land Use Category	**Acres of Land Use**	**Per-Acre FMV**	**Per-Acre GARC Value**	**Easement Compensation Value (Acres x GARC)**
Irrigated Cropland	100	$2,500	$2,000	$200,000
Forestland	100	$625	$500	$50,000
Totals and Total Per-Acre Value*	**200**	**$1,562.50**	**$1,250.00**	**$250,000**
Maximum Easement Compensation Value for a Permanent Easement (NTE 100%)				**$250,000**
Maximum Easement Compensation Value for a less-than-Permanent Easement (e.g. 30-year easement, easement of maximum duration allowed under State law, 30-year contract) (NTE 75%)				**$187,500**

* The total weighted per-acre easement value is calculated by dividing the total acres into the total easement compensation value.

(3) If a landowner offer is made, the documentation must include a determination that the landowner offer is lower than the applicable per-acre fair market values and GARC values.

(4) States must follow the most current easement acquisition internal controls policy prior to obligating funds for the agreement. Once an offer is made and accepted by the landowner, the fair market value, GARC values, or landowner offer value used to calculate the original offer will be used in any future adjustments. Compensation values will be based on the fiscal year of enrollment and will not be recalculated using fair market values or GARC values from a subsequent fiscal year. Adjustments to an accepted offer will only occur as a result of changes in surveyed or offered acres as described in paragraph G below, or if the landowner makes a written offer that is lower than the applicable easement compensation values.

G. Final Acreage and Compensation Amounts

(1) Based upon the easement boundary survey (for an easement) or GPS survey (for a 30-year contract), NRCS will determine the final easement or 30-year contract acreage and compensation amount as follows:

(i) If the change in the surveyed acres is within the scope of the original agreement and is within 10 percent of the acreage estimated at the time the offer was made, the easement compensation value will be adjusted using the total per-acre easement value (weighted per-acre value) calculated at the time the offer was made (see example 1 below). If the fair market value of the land was determined using an individual USPAP appraisal, the additional steps in the administrative adjustment procedure in 440 CPM-527, Subpart E, Section 528.47(G) must also be followed.

Example 1: Within 10-percent change: 200 acres original offer, 220 acres final surveyed acreage

FMV/GARC Land Use Category	Acres of Land Use	GARC Per-Acre Value	Easement Compensation Value
Original Totals and Total Per-Acre Value*	200	$1,250	$250,000
Final Totals Using Original Total Per-Acre Value	**220**	**$1,250**	**$275,000**
Maximum Easement Compensation Value for a Permanent Easement (NTE 100%)			**$275,000**
Maximum Easement Compensation Value for a less-than-Permanent Easement (e.g., 30-year easement, easement of maximum duration allowed under State law, 30-year contract) (NTE 75%)			**$206,250**

(ii) If the change in the surveyed acres is within the scope of the original agreement but is more than 10 percent of the originally estimated acreage, the fair market value determination must be reviewed, as follows:

- If the fair market value was determined using an individual USPAP appraisal, an updated appraisal report is needed (see 440-CPM-527-E, 527.47(G)(4) and 527.48).
- If the fair market value was determined based on the AWMA, the number of acres of each AWMA FMV land use category within the surveyed area must be determined and the applicable per-acre AWMA fair market value from the year of enrollment applied to the acres in each land use category (see example 2 below).

Example 2: Greater than 10-percent change: 200 acres original offer, 230 acres final surveyed acreage

FMV/GARC Land Use Category	Acres of Land Use	GARC Per-Acre Value	Easement Compensation Value
Original Totals and Total Per-Acre Value*	200	$1,250	$250,000
Irrigated Cropland	110	$2,000	$220,000
Forestland	120	$500	$60,000
Final Totals and Revised Total Per-Acre Value	**230**	**$1,217**	**$280,000**
Maximum Easement Compensation Value for a Permanent Easement (NTE 100%)			**$280,000**

FMV/GARC Land Use Category	Acres of Land Use	GARC Per-Acre Value	Easement Compensation Value
Maximum Easement Compensation Value for a less-than-Permanent Easement (e.g., 30-year easement, easement of maximum duration allowed under State law, 30-year contract) (NTE 75%)			**$210,000**

(iii) The applicable GARCs from the year of enrollment will be applied to the revised fair market value determination to calculate the easement or 30-year contract compensation amount based on the GARC. If a landowner offer has been made, such offer will be applied to the final surveyed acreage to calculate the easement or 30-year contract compensation amount based on the landowner offer. The basis for the final compensation amount is the lowest of either the fair market value, the GARC, or applicable landowner offer, amount for the enrollment type as calculated based on the final surveyed acreage and as described in this section.

(2) This final easement or 30-year contract acreage (rounded to the nearest hundredth of an acre) and the adjusted compensation amount will be documented on the final warranty easement deed or 30-year contract (rounded up to the nearest dollar for an amount $0.50 or greater and rounded down to the nearest dollar for an amount less than $0.50), the landowner's acceptance of which will be documented upon execution of those documents. Amendments to the APCE or AECLU forms and landowner signatures are not required to document adjustments to the acreage or compensation amount.

(3) Guidance on obtaining easement boundary surveys is provided in section 528.123 below. Boundary surveys for 30-year contracts are based on a GPS survey conducted by NRCS. NRCS coordinates with the landowner to ensure that the appropriate acres are included in the survey area and reviews the 30-year contract boundary survey with the landowner ensure that it accurately and correctly delineates the area of enrollment.

(4) Upon determination of the final acreage and compensation amount, the easement program specialist provides this information to a financial specialist, who will adjust the obligation in FMMI, as necessary. States must conduct reviews of obligations and adjustments in accordance with the most current easement acquisition internal controls policy. (See subpart U of this part for sample easement/contract compensation adjustment note to file.)

(5) If a within-scope change in final acres differs by more than 10 percent from the originally estimated enrollment acreage, a copy of any acreage and easement compensation adjustment documentation should be provided to the landowner for their information.

(6) If the change to the proposed easement area is determined to be outside the scope of the original agreement, the agreement must be terminated pursuant to the general provisions of the agreement. Out-of-scope changes typically include changes in the area of land offered for enrollment after the WRE agreement is executed or after an appraisal is completed, including acreage substitutions, additions, or deletions affecting more than 10 percent of the original acreage. If the landowner is interested in enrolling the proposed easement area as revised, then a separate determination of eligibility and selection for funding must be made before acquisition of the easement or 30-year contract can continue. Depending on the timing and circumstances of the out-of-scope change, the revised proposed easement area may need to have a new application submitted, be reranked, and have updated title and environmental due

diligence work completed. Before any new agreement may be entered into, the land and landowner eligibility determinations must be made for the current fiscal year and the easement compensation value determination must be made based on the revised proposed easement area using the compensation values applicable to the fiscal year in which the new agreement will be entered. (See subpart O, section 528.144 of this part for additional guidance on the principles of making scope determinations.)

528.123 Easement Boundary Survey

A. General

(1) As an integral part of the easement acquisition process, the boundary of the proposed easement area must be delineated in a manner that is suitable for recording in the public record. The exact recording requirements vary by State. At a minimum, NRCS policy, NRCS easement programs land survey specifications, and State code must be met.

(2) **Easement boundary descriptions and easement boundary maps are based upon a legal land survey and are required for all easement transactions**. Knowing exactly where the recorded easement acres are located will assist NRCS with its monitoring, management, and enforcement responsibilities to protect the Federal investment and ensure program purposes are achieved. Additionally, ingress and egress to the easement area will be described on the easement boundary survey.

Note: It is the landowner's responsibility to provide a sufficient right of ingress and egress to the easement area, as described in subpart K of this part. The landowner providing NRCS with sufficient ingress and egress to the easement site is a condition of eligibility. Additionally, the fair market value of the land determined through an appraisal or AWMA includes an assumption that the land has sufficient legal access, therefore, NRCS will not provide any additional or separate payments for a route of ingress and egress.

(3) Following recordation of the easement, the digitized easement boundaries and polygon attributes are transmitted to the NRCS National Geospatial Center of Excellence (NGCE) in accordance with the guidance in place at the time the easement is recorded. These digital layers, in combination with others, support local, regional, and national program management and ecosystem planning. NGCE loads these digital layers into the national geospatial database when received. (See subpart U of this part for instructions for digitizing and transmitting easement boundaries and the applicable specific guidance on submitting spatial boundaries and attributes provided through regularly updated national bulletins or instructions.)

B. Procuring the Easement Boundary Survey

(1) After the APCE has been signed by the landowner and NRCS, an easement boundary survey is ordered. The easement boundary survey must be based upon a land survey conducted by a State-certified and licensed professional land surveyor. The surveys are obtained using an appropriate procurement method and funds for easement boundary surveys must be obligated to budget object class 3214. Use of a blanket purchase agreement or indefinite delivery and indefinite quantity contract for easement boundary surveys is recommended.

(2) In some cases, it may be more efficient or cost-effective for the landowner to secure the easement boundary survey.

(i) If this option is used, the landowner must secure a written bid for the easement boundary survey from a State-certified and licensed professional land surveyor that is based on the NRCS easement programs' land survey specifications (see subpart U of this part for NRCS easement programs land survey specifications).

(ii) The funds should be obligated to the landowner as the vendor using a supplement to the APCE, these survey funds may be obligated at the time the easement acquisition funds are obligated. (See subpart U of this part for APCE supplement for landowners to procure easement boundary surveys.)

(3) NRCS must ensure that all easement boundary surveys are completed and digitized according to the NRCS easement programs' land survey specifications. NRCS ensures that all easement boundary markers and witness posts with easement boundary signs are installed at the time the easement boundary survey is accepted as correct by NRCS.

(4) The use of the NRCS easement programs' land survey specifications is required unless a modification to the national specification is approved by the national ACEP-WRE manager. Use of these national specifications ensures a consistent product nationally and allows for the most efficient uploading of data to the national ACEP-WRE boundary shapefile maintained by the NGCE.

Note: The easement boundary signs may be ordered free of charge from the NRCS National Publications and Forms Distribution Center-LANDCARE by—

- Visiting https://nrcspad.sc.egov.usda.gov/DistributionCenter/ and typing "sign" in the "Enter keyword" box and then clicking the "search" button and selecting "Agricultural Conservation Easement Program - Wetland Reserve Easements Boundary Sign*."
- Telephone calling 1-(888)-LANDCARE (1-(888)526-3227) and pressing "2."
- Emailing nrcsdistributioncenter@ia.usda.gov.

Please note on your order that these signs will be used in the ACEP-WRE. Signs may be shipped directly to the survey vendor or local USDA service center. All orders must include name, company, shipping address, email address, and contact telephone number.

C. Acceptance of Easement Boundary Survey

(1) After the easement boundary survey is complete, the surveyor must provide a preliminary survey submittal that is acceptable to NRCS in accordance with the land survey specifications. Upon receipt of an acceptable preliminary survey submittal, the NRCS representative and the landowner conduct an onsite easement boundary field review to ensure that—

(i) The area delineated is the area that the landowner intends to place under the easement.

(ii) The area delineated is the area identified and agreed to by NRCS.

(iii) The access route is accurate and acceptable.

(iv) The easement boundary monuments and witness posts have been installed as required.

(2) The onsite postsurvey field review is documented using the easement boundary survey field review memorandum to the file. A copy of the memorandum to the file may be provided to the landowner. (See subpart U of this part for the easement boundary field review memorandum to the file.)

Note: During the onsite visit for postsurvey field review, the NRCS representative should also review the previously completed land eligibility documentation, onsite field inspections (Hazardous Materials Field Inspection, Landowner Disclosure, Physical Features Map, and others) and update as needed to capture changes and document that the entirety of the acres as configured in the final easement boundary survey have been evaluated. Form NRCS-LTP 27, "Preliminary Certificate of Inspection and Possession," should also be completed during the onsite visit for the postsurvey field review (see section 528.124B below).

(3) Following the NRCS review and receipt of an acceptable preliminary survey submittal and the completion of the onsite field review of the surveyed area, NRCS instructs the surveyor to submit the final easement boundary survey materials to NRCS. NRCS reviews the final boundary survey submittal to ensure that it accurately and correctly describes the area of enrollment and satisfies the requirements of the land survey specifications.

(4) Payment for the easement boundary survey may only be issued after the onsite postsurvey easement boundary field review is completed and the final survey submittal has been reviewed and approved by NRCS.

(5) See section 528.122G above for information on incorporating the final easement boundary survey information into the warranty easement deed.

528.124 Finalizing Preliminary Investigations for Easements and 30-Year Contracts

A. General

(1) The preliminary investigations, including obtaining and reviewing the preliminary title search and underlying documents and completing the limited phase-I, must be completed prior to NRCS execution of the agreement to purchase (APCE or AECLU). If there are extenuating circumstances and the State has received written authorization from the EPD director to obligate acquisition funds prior to completing all preliminary investigations, the preliminary investigation activities must be completed as soon as possible after the execution of the APCE or AECLU (see subpart K, section 528.103E of this part).

(2) Prior to easement closing or 30-year contract execution, States must finalize the title and environmental due diligence investigations. These investigations must include a thorough examination of both unrecorded and recorded exceptions to the title and a limited phase-I for the entire surveyed area. These investigations are to conclusively determine whether any existing exceptions to the title, encumbrances, agreements, leases, easements, other clouds on the title, or other circumstances exist that would in any way undermine, preclude, or interfere with NRCS's ability to achieve the purposes of the program or exercise the rights being acquired through the warranty easement deed or 30-year contract.

(3) Title review includes an examination of both recorded and unrecorded exceptions to the title of the offered area and results in findings and recommendations that are documented by NRCS on Form NRCS-LTP-23, "Certificate of Use and Consent," and Form NRCS-LTP-27, "Preliminary Certificate of Inspection and Possession."

(i) Recorded exceptions are identified in the title search and underlying documents, which are typically provided by a closing agent; unrecorded exceptions are identified during interviews with the landowner or others knowledgeable about the land and onsite investigations.

(ii) A thorough review of all exceptions must be completed prior to easement closing or 30-year contract execution. Additional information on the title review process is provided in the paragraphs below and in the subpart U of this part on common real estate transaction terms and title exception guide.

(4) The limited phase-I must include an environmental records search, landowner interviews, and an onsite visit to view present conditions. Prior to easement closing or 30-year contract execution, all limited phase-I materials must be completed, reviewed, and updated as needed based on final configuration of the surveyed easement boundary.

(i) Should the limited phase-I reveal issues requiring further investigation, NRCS staff may complete a full phase-I environmental site assessment that meets the requirements of 40 CFR Part 312 or obtain one from a qualified outside vendor. A full phase I, when conducted and provided by qualified, non-NRCS personnel, uses financial assistance funds.

(ii) If after the completion of the limited phase-I or full phase-I it is determined that a phase-II environmental site assessment or site remediation is necessary, the application must be determined ineligible. If an APCE or AECLU has been entered into, the agreement to purchase must be terminated pursuant to the general provisions of the agreement. The landowner must be informed of the determination and that the offered area may not be reconsidered until the landowner provides sufficient documentation that all necessary investigations have been completed and that the site has been fully remediated to allow for restoration, inundation, and management of the site consistent with the wetland restoration purposes and objectives of the program.

(iii) NRCS may not close on an easement or execute a 30-year contract on property where hazardous materials concerns are identified and are determined by NRCS to pose an unacceptable risk or are sufficient to make restoration unfeasible.

(5) States must finalize title and environmental due diligence investigations to determine impacts and document recommendations as to how to address any existing recorded or unrecorded exceptions to title or environmental due diligence issues. These findings and recommendations must be included in the packages submitted to request a title opinion from OGC for easements or to request EPD approval for 30-year contracts which must be obtained prior to easement closing or 30-year contract execution and as described in the sections below.

B. Identifying Unrecorded Exceptions

(1) Unrecorded exceptions include leases, claims, encumbrances, options, and other evidence that someone other than the landowner has an interest in the property. Information on these unrecorded exceptions is found through interviews with the landowner or other parties associated with the property and through physical inspections of the property.

(2) At the time of application and prior to entering into an agreement to purchase, States must use the landowner disclosure worksheet to prompt the landowner to disclose information about the property that may not be revealed in the title search. The landowner disclosure worksheet should be completed onsite as part of the onsite determinations described in subpart K, section 528.105 of this part. (See subpart U of this part for landowner disclosure worksheet.)

(3) States must use Form NRCS-LTP-27 which provides a mechanism for NRCS to verify and document that there are no apparent, visible activities or uses observed or disclosed that indicate the presence of unrecorded liens, leases, options, or other claims against the property that could impede the landowner's ability to provide clear

title to the property or NRCS ability to achieve program purposes. (See subpart U of this part for the current approved Form NRCS-LTP-27.)

(4) States must conduct an onsite visit to complete Form NRCS-LTP-27 within 12 months of the easement closing date to verify that—

(i) An NRCS employee has visually and physically inspected the property.

(ii) NRCS is aware of the legal boundaries of the property.

(iii) There are no persons or business entities (corporations, partnerships, etc.) other than the landowner that may have or claim rights that would conflict with the interest to be acquired by the United States.

(iv) No work of labor has been performed or materials furnished in connection with repairs or improvements on the property within a span of time that may entitle any person to a lien upon the property for the work or labor performed or materials furnished.

(v) The property to be acquired by the United States is unimproved, unoccupied, and vacant unless otherwise indicated on the certificate. That any occupants have been identified and disclaimers of interest have been obtained for any occupants of the land.

(vi) There are no rights in, or claimed by, parties other than the landowner, except as identified on the certificate, in any of the following:

- Water rights for mining, agricultural, manufacturing, or other purpose
- Ditches or canals constructed by or being used on the property under authority of the United States
- Exploration for or removal of coal, oil, gas, sand, gravel, timber, or any other substance
- Possessory rights claimed or being exercised by under any reservation contained in a patent previously issued by the United States

(vii) The NRCS inspection of the property has found no evidence of potential hazardous materials on, near, or adjacent to the proposed easement area that would be detrimental to the acquisition, restoration, or management of the easement.

(5) The onsite visit to complete the Form NRCS-LTP-27 should be conducted at the same time as the onsite visit for the postsurvey field review.

(6) NRCS must ask the landowner whether there are any existing options or leases on the property for development or extraction of any type, including minerals, timber harvest, energy infrastructure, windmills, solar panels, transmission lines, or others. When the property is encumbered by an agricultural lease, NRCS should encourage the landowner to notify the lessee to work with FSA because enrollment in ACEP-WRE may result in payment issues. NRCS must request copies of any written leases or other agreements the landowner identifies during the landowner interviews used to complete the landowner disclosure worksheet, the hazardous materials landowner interview, or Form NRCS-LTP-27. NRCS should be in possession of the written leases or agreements prior to executing the APCE or AECLU and must be in receipt of these items prior to closing. Unrecorded exceptions must be documented on Form NRCS-LTP-23.

C. Identifying Recorded Exceptions

Recorded exceptions to the title are identified in title search and underlying documents, usually provided by a closing agent. Each recorded exception to the title has an associated underlying document. All title search and underlying documents must be evaluated by NRCS and a determination made as to the acceptability of each existing recorded exception to the title. NRCS determines acceptability based on the impact of

these exceptions on NRCS's ability to achieve the purposes of the program and the potential of these exceptions to undermine or interfere with the rights the United States is acquiring under the warranty easement deed or 30-year contract. States should consult with OGC during this evaluation and determination phase as necessary. NRCS documents the determinations on Form NRCS-LTP-23.

D. Evaluation of Unrecorded and Recorded Exceptions

(1) The Form NRCS-LTP-23 must be completed for all easements and 30-year contracts. Each exception must be fully documented as either acceptable or required to be removed or subordinated, or other appropriate remedy. For each exception, provide a description of the exception, the recommendation for addressing the exception, and the basis for the recommendation on the Form NRCS-LTP-23. (See subpart U of this part for a title exception guide with further discussion on making these determinations.)

(2) Below are examples of recommendations, brief descriptions, and rationales that may appear on the Form NRCS-LTP-23:

(i) Acceptable.—Existing 30-foot-wide power line right-of-way on southern easement boundary, power line located in upland area, no long-term negative impacts anticipated to result from presence or maintenance of power line.

(ii) Must be Subordinated or Removed.—Existing county flowage easement, allows county to remove all vegetation on 5 acres that would be interior to easement, determination that vegetation removal would negatively impact ACEP-WRE habitat restoration.

(iii) Must be Subordinated or Removed.—Mortgages.

(iv) Must be Removed.—Judgments, mechanics, or tax liens. Access exceptions unless explicitly approved by OGC in their title opinion.

(3) Landowners should be notified of unacceptable exceptions as early in the investigation processes as possible to enable the landowner to take timely action to resolve unacceptable exceptions, such as items that must be removed or subordinated, leases that must be terminated, or options that must be cancelled. NRCS may require certain exceptions to be resolved prior to entering into an agreement to purchase (APCE or AECLU) as a matter of eligibility or valuation. All unacceptable exceptions as identified by NRCS or OGC must be resolved by the landowner prior to the easement closing or 30-year contract execution.

528.125 Easement Closing Process

A. General

Once NRCS has concluded eligibility determinations, boundary surveys, easement compensation determinations, due diligence investigations, and document preparation for all easement transactions, NRCS will prepare the preliminary title opinion request to submit to OGC. Easement closing may proceed only after a preliminary title opinion has been provided by OGC and closing instructions have been provided by NRCS. Easement closing will generally be executed through the use of a closing agent. NRCS will prepare the warranty easement deed and necessary exhibits for recordation. Once the easement has been recorded, NRCS must obtain and review the final title insurance policy and request a final title opinion from OGC. The easement acquisition process is complete when OGC issues its final title opinion to NRCS, confirming that title is vested in the United States.

Note: Each OGC office has its own procedures for issuing preliminary title opinions and final title opinions. Pursuant to 40 U.S.C. Section 3111, NRCS is not authorized to issue an easement payment until OGC has approved the sufficiency of title to the land for the purpose for which it is being acquired. Therefore, the procedures described in this section (528.125) may be modified to meet OGC requirements.

B. Closing Agents

(1) The term "closing agent" refers to the person or entity that prepares and provides the documents and services needed to complete the easement acquisition transaction. While in transactions between private parties the closing agent is typically not an agent of either party, in ACEP-WRE easement transactions between NRCS and the landowner, the closing agent is hired by NRCS and thus is considered a buyer's agent. The closing agent may be a title company, escrow company, qualified private attorney, abstractor, or Federal employee familiar with the preparation of such evidence in the jurisdiction in which the lands are situated.

(2) Closing agent services for easement transactions typically include the following:
- (i) Providing title search and underlying documents.
- (ii) Providing a commitment to provide title insurance (title commitment binder or other acceptable document).
- (iii) Obtaining signatures on Form AD-1158, "Subordination Agreement and Limited Lien Waiver," or successor form or equivalent subordination document approved by OGC.
- (iv) Obtaining signatures on warranty easement deed.
- (v) Ensuring that exceptions are addressed according to NRCS and OGC instructions.
- (vi) Recording easements and other documents.
- (vii) Issuing the easement payment through an escrow account.
- (viii) Issuing the appropriate Internal Revenue Service (IRS) Form 1099 to the landowner for the easement transaction.
- (ix) Providing the American Land Title Association (ALTA) closing protection letter, or OGC-approved equivalent, and ALTA U.S. Policy Form 9-28-91 (Revised 12/3/2012) title insurance policy.
- (x) Other functions, as necessary, or which may be required by State law or by the OGC title opinion to finalize the easement transaction, as detailed in the closing instructions provided by NRCS to the closing agent (see subpart U of this part for examples of closing instructions).

(3) Closing agent services are secured through an appropriate procurement method and following proper contracting rules and procedures. NRCS may work with the OGC to develop a task order from a blanket purchase agreement or a statement of work for acquiring closing agent services (see subpart U of this part for closing services scope of work and closing agent requirements). The task order must list all necessary closing agent responsibilities, qualifications, and conditions.

(4) Closing agents providing easement acquisition services to NRCS for ACEP-WRE must obtain a valid Dun and Bradstreet Data Universal Numbering System (DUNS) number and meet the Central Contractor Registration (CCR) requirements through registration or annual renewal in the System for Award Management (SAM) or successor registry. Registration in SAM must be maintained for the duration of any procurement contracts or agreements with the closing agent. Evidence of current active registration must be checked at the time the procurement contract or agreement is entered into and must be valid at the time of obligation of funds to the closing agent services contract or agreement and at the time of each payment. NRCS

provides the closing agent with specific requirements for entering bank account and escrow account information into SAM in accordance with current FPAC-BC Payment Operations Section (POS) guidance.

(5) NRCS must ensure that the closing agent is qualified and certified by law to perform the required services in the State in which the land lies, and that he or she is experienced, financially responsible, and reputable. Prior to issuing funds, NRCS must obtain countersigned closing instructions in which the closing agent certifies these requirements are met.

C. Title Search Documents and Commitments

(1) The closing agent provides the title search, underlying documents, and a commitment to provide title insurance. Commitments, binders, preliminary reports, or other forms of preliminary title evidence are acceptable if they—

(i) Are customarily used in the location.

(ii) Are acceptable to the reviewing OGC attorney.

(iii) Are issued by a qualified closing agent.

(iv) Are based upon a preliminary title search.

(v) Commit the company to issue the approved American Land Title Association (ALTA) U.S. Policy Form 9-28-91 (Revised 12/3/2012) title insurance policy.

(2) The title search documents provide information necessary for NRCS to—

(i) Confirm current fee title ownership of the property in order to verify all of the following:

- Landowner eligibility has been confirmed for all required individuals, legal entities, and required entity members, based on the most current Form CCC-901 or CCC-902E.
- All documents are executed by the sufficiently authorized individuals.
- Easement acquisition funds are appropriately obligated in FMMI.

(ii) Make eligibility determinations related to the impacts of title encumbrances and exceptions.

(iii) Complete Form NRCS-LTP-23.

(iv) Identify actions the landowner must take at or prior to closing, including the execution of any instruments necessary to cure title defects or access rights, to resolve exceptions and provide clear title.

(v) Prepare any necessary Form AD-1158, "Subordination Agreement and Limited Lien Waiver," or successor form.

(vi) Prepare the warranty easement deed.

D. Title Insurance

(1) Prior to closing, closing agents must submit an ALTA closing protection letter or OGC-approved equivalent, for the full amount of the easement compensation amount. The ALTA "Closing Protection Letter – Single Transaction" (revised 4/2/2014, 12/1/18, or successor version) is satisfactory to meet this condition of responsibility. Any insurance, bond, or other indemnification proposed by the closing agent as an equivalent must be submitted as part of the preliminary title opinion (PTO) request under section 528.125F below and confirmed by OGC as acceptable in the PTO. Any account in which the easement funds are to be deposited must be insured for the full amount of the funds deposited, providing for reimbursement to NRCS for any loss of Federal funds caused by errors, omissions, fraud, dishonesty, negligence, or failure by the attorneys, agents, or closing agent employees to comply with NRCS's written closing instructions (see subpart U of this part for a sample closing protection letter).

(2) An ALTA title insurance policy on the ALTA U.S. Policy Form 9-28-91 (Revised 12/3/2012) is required on all easements, including the ingress and egress routes. The closing agent must ensure that the ALTA title insurance policy—
(i) Includes only those title exceptions approved in advance by NRCS and OGC.
(ii) Is written for the full easement compensation amount identified in the warranty easement deed.
(iii) Identifies "The United States of America" as the insured party.
(iv) Declares that the interest being insured is an easement.
(v) Is acquired from a source qualified and authorized by law to issue title insurance policies and approved by the State insurance commissioner or equivalent in the State in which the land is located.

(3) Title insurance is obtained through an appropriate procurement method and following proper contracting rules and procedures. Costs for title insurance must not exceed what is considered fair and reasonable.

E. Easement Deed Preparation

(1) The warranty easement deed, exhibits to the deed, and any applicable Form AD-1158, "Subordination and Limited Lien Waiver," or successor form, is prepared by NRCS and reviewed by OGC based on the following information and documentation:
(i) The findings of the title review and due diligence process.
(ii) Form NRCS-LTP-23.
(iii) Exhibits A and B.—Easement boundary and ingress and egress legal surveys and description.
(iv) Exhibit C.—Part II, Subpart E (subsurface resource restrictions) of the warranty easement deed, if applicable, to explain how oil, mineral, and gas resources may be extracted from the easement area such that adverse impacts to the habitat functions and values are avoided or minimized.

Note: An Exhibit C should be attached to and recorded with the warranty easement deed. In the event there are no specific provisions to be included in the Exhibit C, the Exhibit C should simply state "Not Applicable" unless the local OGC attorney instructs otherwise.

(v) Exhibit D.—Water rights and water uses, if applicable, must be investigated and any water rights necessary to accomplish the objectives of the easement must be identified, negotiated, and captured in exhibit D, to be recorded with the warranty easement deed.
(vi) Exhibit E.—For the reserved grazing rights option only, a grazing management plan must be developed, and benefits, extents, and purposes must be captured in exhibit E, to be recorded with the warranty easement deed (see subpart Q, section 528.162 of this part).
(vii) Basis for the easement compensation amount.

(2) Special provisions may only be inserted in the warranty easement deed for unique legal issues, as determined necessary by the national ACEP-WRE manager and OGC in Washington, DC. Special provisions are not to be used for management or compatible uses.

F. Transmitting Documents to OGC for Preliminary Title Opinion

(1) 40 U.S.C. Section 3111 provides that public money may not be expended to purchase land or any interest in land unless the U.S. Attorney General (or his or her delegate) gives prior written approval of the sufficiency of the title to the land for the purpose for which the Federal Government is acquiring the property. OGC is the delegate of

the U.S. Attorney General for approving the sufficiency of title for easements acquired by USDA agencies. Title review, issues and topics are governed by U.S. Department of Justice (DOJ) regulations, DOJ Title Standards 2016, and applicable program requirements.

(2) To comply with these requirements, upon completion of NRCS investigations, the documents as listed on the OGC "Preliminary Title Opinion Docket Checklist" are assembled and transmitted to the regional OGC office for issuance of a PTO (see subpart U of this part for OGC PTO docket checklist). The PTO reveals the current status of title, sets forth requirements, and documents OGC's approval of title subject to the satisfaction of any requirements contained in the PTO and closing instructions. The regional OGC may further specify the format and any additional content necessary for their review.

(3) The PTO issued by OGC—

(i) Lists exceptions to clear title, if any, which must be resolved prior to recording the easement and making payment to the landowner.

(ii) Provides information for closing instructions.

(iii) Documents that OGC approved the sufficiency of title to the land for the purpose for which the agency is acquiring the easement and authorizes the agency to proceed with the acquisition subject to the satisfaction of the requirements contained in the PTO and closing instructions.

(4) Only OGC has authority to provide a title opinion to NRCS. The transaction must be closed in accordance with the PTO and closing instructions. Only those title exceptions approved by OGC and NRCS may appear on the final policy of title insurance.

G. Issuing the Easement Payment and Perfecting the Easement

(1) Easements must not be closed and no payments may be made unless and until OGC issues a PTO and all requirements in the PTO are completed. NRCS must not expend WRE funds to acquire land or an interest in land unless the sufficiency of title has first been approved by OGC. To the extent that title exceptions arise prior to closing that were not considered by OGC in the PTO, those exceptions must be removed prior to closing. If the new title exceptions will not be removed or if there are other changes not considered by OGC in the PTO, States must seek an amended PTO from OGC.

(2) Upon receipt of the PTO from OGC, NRCS provides the closing instructions to the closing agent and copies for the landowner and the local NRCS office. The closing instructions must include sufficient detail to ensure that all of the requirements identified in the OGC PTO are addressed. Upon receipt of the closing instructions, the closing agent must provide NRCS with a completed and signed ALTA closing protection letter or an OGC-approved equivalent.

(3) The APCE specifies that NRCS may provide payment to the landowner through an escrow account managed by NRCS's selected closing agent. The landowner approves the payment to the escrow account through the execution of the APCE, and, therefore, a separate Form CCC-36, "Assignment of Payment," (or successor form), does not need to be executed by the landowner. The landowner's receipt of a copy of the closing instructions will notify the landowner of the identity of the closing agent selected to handle the easement transaction. The financial specialist will identify the closing agent as the assignee for payment in FMMI.

Note: If a landowner is executing an exchange of real property under section 1031 of the Internal Revenue Code of 1986, the closing agent may need to be identified as an alternate payee in FMMI.

(4) The closing agent handles the funds in the escrow account in accordance with the closing instructions provided by NRCS, which must include all applicable OGC PTO requirements, for ultimate disbursement of the proceeds to the landowner. The escrow account must be fully insured by the closing agent to ensure that Federal funds are not lost due to bank failure or otherwise.

(5) NRCS may order the easement funds disbursed to the closing agent no more than 30 calendar days prior to scheduled easement closing. The closing agent may not hold the funds in escrow for more than 30 calendar days. If the easement cannot be closed within 30 calendar days, the closing agent must return the funds (and any accrued interest) to NRCS in accordance with NRCS instructions. When closing does not occur within 30 days of an advance payment, the State or Easement Acquisition Branch (EAB) must notify the FPAC-BC POS immediately. The FPAC-BC POS will follow current policy regarding cost recovery of an advance payment.

(6) The easement payments must be issued through an escrow account unless State laws prohibit this method or the State, EPD, and the regional OGC office have agreed to an alternative method. In those cases, NRCS may issue the easement payment directly to the landowner. If NRCS issues the easement payment directly, NRCS must generate and issue the appropriate IRS Form 1099 or inform the landowners in writing that the landowner is responsible for correctly reporting the easement compensation amount as identified in the warranty easement deed and any payments received, even if an IRS Form 1099 is not issued.

(7) The closing agent closes the easement in accordance with the closing instructions.

(8) NRCS conducts an onsite visit and completes Form NRCS-LTP-22, "Final Certificate of Inspection and Possession" (FCIP). NRCS will follow the instructions provided by their OGC regional attorney in regard to whether the FCIP must be completed prior to or after closing. If prior to closing, the FCIP form must be completed no more than 2 months prior to the closing date, if after closing, the FCIP form must be completed upon receipt of the recorded documents.

(9) Upon receipt of the recorded documents and final ALTA U.S. Policy Form 9-28-91 (Revised 12/3/2012) title insurance policy from the closing agent, NRCS reviews the policy and the completed FCIP to verify that the OGC title opinion and NRCS closing instructions were followed, verify that there are no new exceptions to the title, and determine the current ownership configuration.

(10) NRCS will then request a final title opinion (FTO) and transmit copies of the recorded easement documents, copies of the recorded releases, subordinations or other resolutions required by the PTO, a copy of the final title insurance policy, and the completed FCIP form to the OGC regional attorney. The OGC regional attorney reviews the submitted documents and informs NRCS if additional documents are needed before issuing an FTO.

(11) Payment is processed to the closing agent for the closing services upon verification that all NRCS closing instructions, including OGC title opinion instructions, have been followed and the final ALTA U.S. Policy Form 9-28-91 (Revised 12/3/2012) title insurance policy is correct.

H. Reporting Easement Actions With FSA

(1) Once NRCS executes the APCE, NRCS provides to the local and State FSA office in writing the information needed for FSA to track the 25-percent county cropland

acreage cap of land enrolled in the ACEP-WRE and the Conservation Reserve Program. This information includes a map or shapefile of the proposed easement area and accompanying soils information if the easement area includes "subclass w" soils in the land capability classes IV through VIII. NRCS must ensure the 15-percent county cropland acreage cap on land enrolled in an ACEP-WRE easement is not exceeded. FSA county cropland records are the basis for tracking ACEP-WRE cropland acreage percentages. ACEP-WRE easements enrolled on noncropland acres or on cropland situated on exempted "subclass w" soils, as determined by NRCS, do not count against the 15-percent cropland limitation.

(2) Once NRCS has recorded the warranty easement deed, it notifies the local and State FSA office of the date that the easement was recorded and the total acreage enrolled, including an updated map or shapefile as needed, and documents such notification in the easement case file. (See subpart U of this part for sample FSA notification.)

(3) The landowner is responsible to work with FSA to retire or transfer base acres associated with the easement area prior to closing the ACEP-WRE easement. In situations in which the landowner has the option to transfer base acres to another farm or tract, those landowners will work directly with FSA to facilitate the exchange.

528.126 Thirty-Year Contract Execution Process

A. Thirty-Year Contract Preparation

(1) The actual 30-year contract document and exhibits vary based on how the land is owned, specifically whether the lands are held in Tribal trust by BIA, are Tribal lands, allotted lands, or are individually held. States should contact the national ACEP-WRE manager early in the enrollment process to determine the correct 30-year contract document needed based on the ownership of the individual enrollment.

(2) Prior to executing the 30-year contract, States must obtain EPD director review and written approval to proceed. To initiate this review, States must assemble and upload to the easement business tool (e.g., NEST) a 30-year contract review package that includes the following documents:

(i) Unsigned 30-year contract and completed exhibits

(ii) Boundary description and map of the contract area and access route (GPS)

(iii) Form NRCS-LTP-27

(iv) Landowner disclosure worksheet

(v) Form NRCS-LTP-23

(vi) Limited phase-I that includes an environmental records search report, the hazardous materials landowner interview, and the hazardous materials field inspection checklist

(vii) Title search or title status report with copies of underlying documents

(viii) Any appropriate title clearance documents or explanation of acceptance of encumbrances or other issues identified on title search report

(ix) The signed AECLU form and any extension

(x) The Internal Controls (IC) prepayment checklist with first- and second-level review completed

(3) For 30-year contracts below the national-level IC review threshold, notification and transmittal of the 30-year contract review package to EPD must be completed at least 30 days prior to the anticipated date for signing the contract.

(4) For 30-year contracts requiring national-level IC review, notification and transmittal of the 30-year contract review package to EPD must be completed at least 60 days prior to the anticipated date for signing the contract.
(5) Upon receipt of the EPD director's written approval of the 30-year contract package and prior to executing the 30-year agreement and making payment, States must complete all required internal control reviews in accordance with National Instruction 300-300, "Instruction and Guidance for State Implementation of Easement Internal Controls Prior to Obligation, Payment, and Closing" (as amended).

B. Issuing the 30-year Contract

There is no title insurance policy obtained on 30-year contracts; therefore, an updated title search report must be obtained and reviewed by the State no more than 3 months prior to the landowner signing the 30-year contract. This is to ensure that no changes to the title have occurred since the initial report was reviewed that would impact NRCS's entering into a 30-year contract on the property. If the updated title search reveals that unacceptable changes have occurred since the EPD approval was received, the new title report must be sent to EPD director for review.

C. Issuing the 30-year Contract Payment

The fully executed 30-year contract signed by the landowner and then NRCS serves as authorization to issue payment to the landowner, a separate application for payment (Form AD-1161, "Application for Payment," or successor form) is not needed. The 30-year contract payment is reduced by the amount identified in the final WRPO as the landowner's share of the restoration costs. By signing the AECLU form, the landowner agrees that NRCS must withhold from the 30-year contract payment an amount equivalent to 25 percent of the projected restoration costs.

528.127 Records Management

A. The following materials related to acquiring, monitoring, and enforcing an ACEP-WRE easement must be maintained in a secure fireproof file area at the NRCS State office:

(1) The title folder containing acquisition documents and acquisition-related correspondence, including, at a minimum, all application, eligibility determination, and waiver requests and findings, all items included in the OGC PTO docket package, the OGC title opinions, closing instructions, the final title insurance policy, a copy of the recorded deed and all exhibits, and any easement or related cost payment documents
(2) Documentation of easement compensation determination, including any GARC worksheets, or if an individual appraisal was used, any agency-approved appraisal reports, administrative appraisal reviews, and technical appraisal review reports must be retained in the official NRCS file associated with the easement
(3) Copies of any records generated as a result of violations or enforcement proceedings (see 440-CPM, Part 527, Subpart P, for more detail)

Note: Beginning in FY 2020, copies of monitoring reports must be retained in the easement business tool (e.g., NEST). For monitoring conducted prior to FY 2020, copies of monitoring reports must be retained either in the easement business tool (e.g., NEST) or in the NRCS State office files but are not required to be kept in a fireproof file area.

B. Easement acquisition, monitoring, and enforcement materials must be retained in the NRCS State office for the duration of the easement. Do not send ACEP-WRE easement acquisition files to the archives, as monitoring and maintenance requires access to file documents for the life of the easement.

C. Copies of easement acquisition documents may be kept in the field office.

D. Cancelled files will be kept for the term of the Farm Bill under which they applied.

E. Documents required to be loaded in easement business tool (e.g., NEST) are identified on the specific checklists for internal controls and internal controls guidance, business tools and associated document management guidance, audit sample requirements, or other specific FPAC-BC customer guides.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart N – ACEP-WRE Restoration

528.130 Overview

A. This subpart provides guidance related to the objectives, considerations, and requirements for the restoration of wetlands through ACEP Wetlands Reserve Easement (ACEP-WRE) and the planning and development of a wetland reserve plan of operations (WRPO) for all individual enrollments to implement such restoration.

B. States must develop, in coordination with the State technical committee, State-specific criteria and guidelines for wetland restoration under ACEP-WRE. These State-specific wetland restoration criteria and guidelines document the technical considerations, rationale, and parameters used in the State's implementation of ACEP-WRE activities such as—

(1) Land eligibility determinations.
(2) Prioritization, evaluation, and ranking of applications.
(3) Planning and implementation of restoration, enhancement, and management activities on the enrolled area.

C. For all ACEP-WRE enrollments, NRCS must develop a WRPO that is designed to achieve program purposes and is consistent with State-specific criteria and guidelines for wetland restoration. To enroll in ACEP-WRE, a landowner must agree to the implementation of a WRPO, the effect of which is to restore, protect, enhance, monitor, maintain, and manage hydrology, native vegetation, natural topography, and other landscape features of eligible lands.

D. The landowner's agreement to the implementation of a WRPO is documented in the agreement to purchase (Form NRCS-LTP-31, "Agreement for the Purchase of a Conservation Easement" (APCE) or Form NRCS-LTP-40, "Agreement to Enter Contract for 30-Year Land Use" (AECLU)) used to enroll the land into ACEP-WRE. The terms of the warranty easement deed and 30-year contract continue such agreement for the duration of the enrollment. It is NRCS's intent to engage the landowner in implementing the WRPO; however, NRCS is the final decisionmaker on the development, content, and implementation of the WRPO.

E. It must be clearly explained to the landowner that the WRPO does not supersede or modify the rights acquired by the United States by and through NRCS under the terms of the warranty easement deed.

F. Based on the WRPO, NRCS provides funds to establish conservation practices, measures, and activities to restore, enhance, and protect the wetland functions and values, including necessary maintenance activities, on the individual easement or 30-year contract lands to the extent that NRCS determines that funding is appropriate. **Funding for practices, measures, or activities, outside the easement or 30-year contract area is not authorized or allowed.**

G. The WRPO is established and maintained in the designated NRCS conservation planning system, as applicable, and conforms to Title 180, National Planning Procedures Handbook (NPPH), Part 600. (See subpart U of this part for the ACEP-WRE business process.)

528.131 General

A. Wetland Restoration Definition and Principles

(1) For the purposes of ACEP-WRE, wetland restoration is defined as the rehabilitation of degraded or lost wetland and associated habitats pursuant to published State-specific criteria and guidelines developed in coordination with the State technical committee in a manner such that:

(i) The original, native vegetative plant community and hydrology are, to the extent practicable, reestablished; or

(ii) A hydrologic regime and native vegetative community different from what likely existed prior to degradation of the site is established that will:

- Substantially replace the original habitat functions and values while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife; or
- Address local resource concerns or needs for the restoration of wetland functions and values for wetland-dependent wildlife as identified in an approved State wildlife action plan or NRCS national initiative.

(2) The principles set forth in the definition of wetland restoration:

(i) Are applicable to the entire easement area, including all of the wetlands and any associated habitats in the easement area; and

(ii) Guide decision making for the duration of the enrollment from initial eligibility determinations, through development and implementation of the WRPO, and on through the long-term management of the easement or 30-year contract area including WRPO revisions and the issuance of compatible use authorizations (CUAs).

(3) Under ACEP-WRE, the primary objective is the restoration of wetland functions and values through the reestablishment of the hydrology and native vegetative communities that would have been found on the enrollment area prior to its manipulation or degradation. However, under certain conditions, wetland restoration under ACEP-WRE may include the establishment of hydrologic regimes or native plant communities that were not historically present on the enrollment area itself, consistent with the State-specific wetland restoration criteria and guidelines. These are also known as an alternative community and are more fully described below in section 528.132D.

(4) The definition of wetland restoration for ACEP-WRE is intended to facilitate the following:

(i) Enabling NRCS to ensure that cost-effective restoration and maximization of wildlife benefits and wetland functions and values result.

(ii) Enabling NRCS to assist landowners with meeting their wetland and wildlife habitat goals.

(iii) Providing for a full array of varying wetland conditions that existed in the local area, even if they cannot be shown to have existed on a particular site.

(iv) Conducting restoration activities that provide valuable wildlife habitat and wetland functions in locations where it is impossible to reestablish the original community or hydrologic regime.

B. Development of State-specific Wetland Restoration Criteria and Guidelines

(1) The State-specific Wetland Restoration Criteria and Guidelines (WRCG) is the document in which each State identifies more specifically the technical information the State will use to guide decision making for activities related to eligibility,

ranking, selection, restoration, enhancement, and management of wetlands and associated habitats under ACEP-WRE to ensure program purposes are achieved. The WRCG should also capture such technical criteria and guidelines that have been developed in consultation with the State technical committee, and with input from other partners such as U.S. Fish and Wildlife Service (FWS), State wildlife agencies, and others. The State-specific WRCG should be a robust document in order to serve as a basis for various technical determinations and decisions related to wetland restoration activities implemented under ACEP-WRE throughout the lifespan of an easement or 30-year contract.

(2) At a minimum, the State-specific WRCG, developed with input from the State technical committee, must address the following:

(i) Identification of historic wetland types in the State, with a focus on those commonly enrolled in or restored under ACEP-WRE, including—

- A brief description of the characteristics, including associated habitats, and the common wetland functions and values of each.
- State distribution (maps or geospatial layers if available).
- A list of the references or sources of information.
- Common approaches to restoration of the identified wetland types, including where applicable, descriptions of practices or measures used to achieve wetland restoration in the context of changed offsite hydrologic conditions (e.g., levees, dams, drainage, etc.).

(ii) Alternative communities that may be established on ACEP-WRE sites, including—

- A brief description of each, including the hydrologic regime, native vegetative community and other characteristics, associated habitats, and the common wetland functions and values of each.
- State distribution (maps or geospatial layers if available).
- The conditions and criteria under which an alternative community may be established and the historic wetland types or functions and values normally associated with those wetland types that the alternative community would be in lieu of.
- Any State-established limits to the types or extents of alternative communities that may be established or managed for on an individual site.
- Considerations and basis the State will use for authorizing wetland restoration to include the establishment or management of an alternative community, including how such community will—:
  - Substantially replace the original habitat functions and values while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife, or
  - Address specific resource concerns or needs for the restoration of wetland functions and values for wetland-dependent wildlife as identified in State wildlife action plans or NRCS national initiatives, and the specific plans wherein the resource concerns or needs were identified.

(iii) Adjacent land eligibility considerations and limitations, as described in subpart K, section 528.105I of this part.

(3) It is also recommended that the State-specific WRCG be used to document the following:

(i) Technical criteria and thresholds specific to the individual land eligibility categories as described in subpart K, sections 528.105(C) through (H), to aid in determining and documenting land eligibility.

(ii) Technical considerations and parameters that will be used for waiver determinations under the purview of the State conservationist related to land eligibility, such as—

- Larger widths or linkage distances for riparian areas enrolled under the riparian area land eligibility category (subpart K, section 528.105E of this part).
- Enrollment of lands with excessive restoration costs (subpart K, section 528.106B(8) of this part).
- Additional specific criteria developed by the State conservationist for consideration of lands established to trees under the Conservation Reserve Program (CRP) (subpart K, section 528.106B(2) of this part).

(iii) The technical considerations that may be used in the State to develop ranking factors, special ranking considerations, or ranking pools used to prioritize projects for selection (subpart L, section 528.111 of this part).

(iv) Practices and activities eligible for ACEP-WRE funding (see section 528.133 below).

(v) Additional items or requirements that the State conservationist has identified must be included in or addressed in the WRPO (see section 528.134 below).

(vi) Technical considerations and parameters used in prescribing common CUAs, such as mowing, grazing, or water level management, for the wetland habitat types identified in the WRCG.

(vii) For States enrolling projects under the reservation of grazing rights option, this technical information would include—

- A description of the wetland ecosystems and the associated wetland functions and values that will be furthered through the use of grazing as a management tool and a description of geographic areas in the State where such wetland ecosystems occur such that the reservation of grazing rights enrollment option will be offered.
- The technical criteria used to determine whether an individual application meets the criteria outlined in the designation of the wetland ecosystems and geographic areas.
- The general principles, characteristics, or restrictions related to the grazing of the designated wetland ecosystems that will be incorporated into the Exhibit E (to the warranty easement deed with a reservation of grazing rights) to be used for the identified ecosystem.
- Other technical considerations and parameters States may establish for the administration, planning, and oversight of such enrollments (see subpart Q, section 528.162 of this part).

(4) The State-specific WRCG does not supersede the policy set forth in this part, and in the event of a conflict, the policy set forth in this part prevails. The primary function of the State-specific WRCG document is to serve as a decision-making aid for various technical determinations as described in this section. State conservationists may also use the State-specific WRCG to supplement the policy set forth in this part for the purposes of ACEP-WRE administration and implementation in the State, provided the intended applicability of such provisions are made clear in the WRCG document and any such State-level supplements are developed, reviewed, approved, and published in accordance with Title 120, National Directives Management Manual (NDMM), Part 503.

C. WRPO Purpose

(1) NRCS works with the landowner, FWS, and other conservation partners to ensure the native plant communities and hydrologic regimes that maximize the wetland functions and values and habitat benefits for wetland-dependent wildlife are restored to the maximum extent practicable in a cost-effective manner.
(2) The WRPO specifies the manner in which the easement or 30-year contract area is restored, protected, enhanced, monitored, maintained, and managed to accomplish the goals of the program. NRCS may review, revise, amend, and supplement the WRPO, as needed, to ensure that program goals are fully and effectively achieved.
(3) Specifically, the WRPO considers and addresses, to the extent practicable, the onsite alterations and the offsite watershed conditions that adversely impact the hydrology and vegetation and the associated wildlife and wetland functions and values.

D. Partnerships

(1) NRCS
(i) Develops and maintains partnerships that contribute to the planning, restoration, management, maintenance, and monitoring of wetland and ecosystem functions and values during and beyond the life of the ACEP-WRE easement or 30-year contract.
(ii) Requests input from the FWS, State wildlife agencies, and the local conservation district to obtain restoration planning and implementation technical assistance to achieve maximum restoration potential.
(iii) May enter into agreements with Federal or State agencies, conservation districts, and private conservation organizations to assist NRCS with program implementation, including the provision of technical assistance for development and implementation of restoration plans and management and monitoring of existing ACEP-WRE lands.
(2) To the extent possible, NRCS works with landowners and other partners who can contribute resources to the ACEP-WRE project. However, NRCS is ultimately responsible for ensuring that ACEP-WRE objectives are fully met and is the final authority regarding the use of ACEP-WRE funds and the practices and activities prescribed on ACEP-WRE lands.

528.132 Restoration Requirements

A. General

(1) The landowner must be provided the opportunity to participate in the development of restoration, management, maintenance, and any future enhancement plans for the easement or 30-year contract. NRCS is the final decisionmaker for WRPO development and content.
(2) The WRPO must—
(i) Be consistent with the State-specific WRCG for ACEP-WRE and the resource-conservation planning requirements contained in 180-NPPH, Part 600, except where modified by the requirements of this part.
(ii) Include practices meeting NRCS standards and specifications developed for the local Field Office Technical Guide (FOTG), including approved interim standards.
(iii) Have conservation practices, extents, schedule, and geospatial data entered in the Conservation Desktop (formerly Customer Service Toolkit), or successor national NRCS planning tool and database platforms.

(iv) Focus on providing maximum wetland functions and values and habitat benefits for migratory birds and other wetland-dependent wildlife, including at-risk species.

(v) Include necessary management, operations, and maintenance practices, activities, and guidelines.

(3) In general, restoration of the easement or 30-year contract area, whether implemented by the landowner or a third party authorized by NRCS, should begin within 1 year of the easement recording or the date the 30-year contract is signed by the State conservationist. **Restoration activities must be completed within 3 years of such date unless there are extenuating circumstances approved and documented by the State conservationist.** See subpart O, section 528.142C of this part for specific requirements for the easement restoration agreement practice implementation schedule.

(4) Practices must be maintained for the useful life of the practice, as designated in the FOTG.

(5) NRCS must identify in the WRPO whether the landowner has agreed to assume operations and maintenance (O&M) responsibilities or how such responsibilities will be met. If the landowner or a partner is unable or unwilling to perform necessary O&M activities, restoration practices and extents may need to be modified to accommodate NRCS's limited capacity to conduct O&M.

B. Restoration of Hydrology

(1) The WRPO addresses the restoration and enhancement of hydrology to provide the greatest environmental benefits for the funds expended. State conservationists consider and address, to the extent practicable, the landscape throughout the watershed that has been adversely impacted and maximize opportunities to restore and enhance wetland functions and values on the easement or 30-year contract area.

(2) Hydrology restoration reestablishes the conditions that existed prior to manipulation to the maximum extent practicable. NRCS examines direct onsite manipulations and offsite watershed effects when determining hydrology restoration potential. When onsite or offsite alterations have diminished hydrology (e.g., timing, duration, depth, and extent) on the enrollment area, it may be necessary to implement structural measures to establish hydrologic conditions that mimic predisturbance characteristics had these onsite or offsite effects not existed.

(3) Hydrology restoration measures used to compensate for onsite or offsite hydrologic effects are considered appropriate restoration measures and are eligible for funding on the easement or 30-year contract area. These measures may include but are not limited to the removal of fill from former temporary or seasonal wetland depressions and historic oxbows, complete or partial ditch filling, macro and micro topography development, riparian dike removal or notching, or installation of dikes or water-control structures.

(4) WRPOs with structural practices must address hydrology management (e.g., temporary flooding of wetlands and draw-down periods) that replicates the wetland hydrology and supports the wetland and habitat types that existed prior to manipulation. Hydrology restoration and management for alternative communities which are different from what likely existed prior to degradation of the site must be consistent with the State-specific WRCG, including any applicable limits on the extent of the enrollment area that may be established or maintained as an alternative community.

(5) If active management of hydrology is necessary, the WRPO must specify the management objectives, guidelines, and activities. The management component of

the WRPO outlines the appropriate amount of water to be available during key periods for targeted wildlife species and habitat objectives throughout the year.

Examples: Water levels will be managed to ensure that early fall migrants and late spring migrants have water available at appropriate depths for foraging and rest. Water drawdown may be required to provide shorebird feeding areas. In addition, resident species, such as amphibians, reptiles, fish, and nesting birds, should have water available at appropriate depths and durations during their breeding cycle.

(6) If hydrology management is to be conducted by the landowner, the WRPO must also describe the requirement and process for the landowner to obtain any necessary CUAs needed to implement the activities, more fully described in subpart P, section 528.152 of this part.

(7) If water rights are necessary to ensure the planned restoration and management of the hydrology on the easement or 30-year contract area can be implemented, the requirements related to the uses of the water rights must be described in a "Water Uses and Water Rights Exhibit" recorded with the warranty easement deed or attached to the 30-year contract (see subpart U of this part for Water Uses and Water Rights exhibits).

C. Restoration of Vegetation

(1) The WRPO also addresses the restoration of vegetative communities to provide the greatest environmental benefits for the funds expended. Wetland restoration under ACEP-WRE may include the reestablishment of native vegetative communities that were present on the site historically or determined appropriate as part of an alternative community. The ultimate goal of such restoration is the long-term establishment of self-sustaining native plant communities that NRCS determines appropriate for the wetland types and hydrologic regimes being restored on the easement or 30-year contract area to maximize wetland functions and values, including providing habitat for wetland dependent wildlife.

(2) States must determine the appropriate native vegetative communities to be restored and whether such restoration will occur through natural regeneration, active planting, management, or some combination thereof and include this information in the WRPO. This determination should consider whether reestablishment through natural regeneration and management activities is anticipated to occur in a reasonable timeframe and whether noxious, invasive, nonnative, or undesirable species will colonize the site in the interim and ultimately preclude the establishment of the appropriate native vegetative communities.

(3) States have discretion to use financial assistance funds to implement the conservation practices, measures, and activities necessary to restore the native vegetative communities, whether such communities are an assemblage of species that existed on the site prior to its degradation, or are an alternative community comprised of native species found in the area but may not have occurred on the specific easement or 30-year contract area. In the rare circumstance that native vegetation is not available, States may use naturalized plant species that provide similar benefits as the native species, however, the use of such naturalized plant species should be limited and based on parameters outlined in the State-specific WRCG developed with input from State technical committee.

(4) If it is determined that it is not feasible to cost-effectively reestablish the appropriate native vegetative communities on the easement area, the application may be considered ineligible (see subpart K, section 528.106B of this part).

D. Alternative Communities

(1) An alternative community is a hydrologic regime and native vegetative community that occurs naturally in the general landscape area in which the easement or 30-year contract site is located. The establishment of an alternative community will result in wetland and associated habitats different than what existed prior to the degradation on the specific site.

(2) **The establishment of alternative communities through restoration or management must be conducted in accordance with the provisions and limitations identified in the State-specific WRCG.** States may identify in the State-specific WRCG that the establishment of alternative communities is not appropriate for some or all of the wetland types being restored under ACEP-WRE. If the establishment of alternative communities is determined appropriate for some or all of the wetland types being restored under ACEP-WRE, the State-specific WRCG must describe the types of alternative communities that may be established, which includes the wetland and any associated habitats, as well as the criteria, guidelines, limitations, and other applicable provisions under which such establishment may occur (see section 528.131B above for specific requirements).

(3) The purpose of the alternative community should be to—

(i) Substantially replace original habitat functions and values of the site while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife.

(ii) Provide wetland and associated habitat types or elements limited in the area.

(iii) Address limiting conditions for wetland-dependent wildlife.

(iv) Establish enhanced habitat conditions for at-risk species.

(v) Establish unique, rare, or declining wetland habitat types.

(vi) Restore wetland functions and values for wetland-dependent wildlife as identified in an approved State wildlife action plan or NRCS national initiative.

(4) Examples of alternative communities include the following:

(i) Rather than restore a site that was historically bottomland hardwood entirely to a forested wetland community, a portion of the site could be restored to an emergent marsh community to increase food availability for migratory waterfowl and other wetland-dependent wildlife to offset the decreases in the larger watershed that are affecting such wildlife populations as identified in the State wildlife action plan.

(ii) Restoring a portion of a site that was historically seasonal wetlands to a permanent wetland condition to mimic the functions of oxbow wetlands that occurred historically but have diminished in the area but were not previously found on the specific site.

(iii) Restoring or managing a site in such a way that early successional habitat is present on a greater portion of the site or for a longer period than would have occurred historically in order to provide a missing habitat element for an at-risk wetland-dependent wildlife species identified in the State wildlife action plan. Management could include such actions as mowing or burning.

(iv) Designing the restoration to accommodate for the anticipated transition of a historically freshwater coastal wetland to more brackish conditions due to sea level rise.

528.133 Restoration Practices

A. The State conservationist identifies, with advice from the State technical committee, FWS, State wildlife agency, and conservation districts, practices and activities that are eligible for ACEP-WRE funding. With consideration of the initial installation cost and long-term maintenance costs, any reasonable practice or activity needed to restore and enhance ACEP-WRE lands is eligible.

B. When associated with the restoration of an ACEP-WRE, wetland enhancement or creation practices on upland acres are considered eligible conservation practices for funding when they contribute to the restoration objectives and are technically feasible.

Note: It is recommended States identify eligible practices and activities, including any associated conditions under which a State conservationist may authorize certain practices in their State-specific WRCG document.

C. When at-risk species or unique, rare, or declining wetland habitat types are used for ranking purposes, an appropriate extent of the restoration is targeted to provide suitable habitat for those species or to restore the identified wetland habitat types. The restoration of these at-risk species habitats or unique wetland habitat types may be part of the restoration of the original or alternative communities.

D. Installation of fences, including boundary fences, to control the access of livestock to the easement or 30-year contract area is an appropriate restoration practice when the fence is justified based on the impact livestock would have on the area's wetland functions and values. When NRCS determines a fence to be necessary, the fence must be designed to enable wildlife movement into and out of the enrolled area.

E. Boundary fence, cross-fencing, and livestock-watering facilities to manage grazing within the easement or 30-year contract area are not eligible practices unless use of such practices is requested by the State conservationist and authorized in writing by the EPD Director and necessary to accomplish grazing consistent with the terms of an authorized CUA or where applicable, an NRCS-approved grazing management plan. The State conservationist request may be submitted on an individual project basis or for particular wetland types and must include a description of the role of grazing as a mechanism to achieve program purposes, a brief summary of the grazing prescriptions that may be used to ensure program requirements are met, and an explanation of the relationship of the proposed practices to the ability to accomplish such grazing. Other practices related to grazing and livestock management on the easement or 30-year contract area are not eligible for funding through ACEP-WRE and irrespective of funding source may only be implemented pursuant to an authorized CUA or where applicable, an NRCS-approved grazing management plan.

528.134 Preliminary and Final WRPO

A. WRPO: Purpose and Development

(1) The development of the preliminary WRPO begins early in the application process and is a critical component of the onsite evaluation and ranking visits. The landowner and other partnering agencies, such as FWS, State wildlife agency and conservation district representatives, should be included in the planning process, if available. The preliminary WRPO is developed concurrently with the evaluation and ranking process described in subpart L of this part.

(2) The purpose of the preliminary WRPO is to provide sufficient information to allow the landowner to understand the project's anticipated scope and effect, including

habitat objectives and anticipated restoration, management, and O&M requirements, and to allow NRCS to develop a reasonable cost estimate for ranking purposes. This basic information is necessary for both parties to determine whether to proceed in the enrollment process.

(3) If at this point in the process the landowner and NRCS cannot come to agreement on the practices and on the management, operation, and maintenance activities that will be applied to restore, protect, and maintain the wetland functions and values and wildlife benefits, the process should be ended and the application cancelled. NRCS is the final decision-making authority regarding what is contained in the WRPO.

(4) State conservationists must ensure that the WRPO is developed, to the extent possible, in a manner that provides for cost-effective restoration, enhancement, management, and maintenance that maximizes wetland functions and values and wildlife benefits. At minimum, the conservation practices, extents, and schedule will be entered into the Conservation Desktop (formerly Customer Service Toolkit), or successor national NRCS planning platform.

(5) Depending on the enrollment type, the extent to which the WRPO is completed at different points in the enrollment process may vary, as follows:

(i) For all permanent easements:

- Prior to Easement Fund Obligation.—The preliminary WRPO must provide sufficient information for cost estimation for ranking purposes, landowner concurrence with the conceptual plan, and preliminary obligation of restoration funds (see subpart O, section 528.142B of this part).
- Prior to Easement Closure.—The preliminary WRPO may be further refined during the acquisition process and must include all elements listed below in sections 528.134B and C prior to easement closure.
- Prior to Final Obligation of Restoration Funds.—The final WRPO and associated contracts are required to obligate restoration funds to the obligating documents through which the restoration funds will be paid.

(ii) For all 30-year contracts, 30-year easements, or less-than-permanent easements due to maximum duration allowed under State law:

- Prior to Easement or 30-year Contract Fund Obligation.—The preliminary WRPO must provide sufficient information for cost estimation for ranking purposes, landowner concurrence with the conceptual plan, and initial obligation of restoration funds.
- Prior to 30-Year Easement Closure or 30-Year Contract Execution.—A final WRPO must signed by all parties. NRCS will withhold from the easement or contract payment an amount equal to 25 percent of the final WRPO restoration costs.

B. Preliminary WRPO: Plan Elements

(1) The exact content and format of the preliminary WRPO will be established by the State conservationist to address specific needs in the State.

(2) The preliminary WRPO must—

(i) Provide sufficient information to—

- Allow the landowner to understand the anticipated scope and effect of the restoration.
- Allow NRCS to develop a reasonable cost estimate for ranking and preliminary obligation of restoration funds.

(ii) Identify restoration and wildlife habitat improvement goals and objectives, such as the approximate acres of various habitats to be restored and enhanced; any

unique project characteristics, such as threatened and endangered species habitat; identify species or plant communities being targeted for restoration; and the associated management needs.

(iii) Identify conservation practices and include sufficient engineering and design to reasonably estimate practice costs. However, such details as timing of installation, species composition for plantings, exact lengths and widths of dikes, or specifications for water control structures may be left to the final WRPO design and implementation phase.

(iv) Describe partner contributions, including funds and in-kind services.

(v) Include an NRCS environmental evaluation (Form NRCS-CPA-52, "Environmental Evaluation Worksheet" or successor form) which must be completed as part of the planning process and signed by the responsible Federal official (RFO) and include any associated documentation needed to comply with National Environmental Policy Act (NEPA) requirements.

(vi) Broadly outline anticipated management, operations, and maintenance activities based on planned habitat objectives and anticipated practices.

C. Preliminary WRPO: Map Elements

At minimum, the preliminary WRPO plan map consists of—

(i) An aerial photo and maps that identify the offered land, ingress, egress, and the approximate location of practices that will be established.

(ii) Acres of various existing and planned habitats. (See subpart U of this part for habitat classification information.)

(iii) A soils map.

D. Final WRPO Contents

(1) The exact content of the final WRPO will be established by the State conservationist to address specific needs in the State and to meet the restoration, enhancement, and protection goals and management and maintenance needs of the enrolled area.

(2) The State conservationist will review, revise, and supplement the WRPO as needed throughout the duration of the enrollment to ensure that program goals are fully and effectively achieved.

(3) The final WRPO—

(i) Does not have to be completed prior to the closing of a permanent easement.

(ii) Must be completed prior to the closing of less-than-permanent easement (either a 30-year easement or maximum duration allowed under State law).

(iii) Must be completed prior to the execution of a "30-year Contract for Land Use with Tribes" form (appropriate version from the NRCS-LTP-43 series) and attached as an exhibit to the 30-year contract.

(iv) Plan extents and cost estimates serve as the basis for the funds to be withheld from the 30-year or maximum duration easements or 30-year contract payment to the landowner as described in subpart O of this part.

(v) Must be completed prior to the final obligation of restoration funds for all enrollment types.

(4) The State conservationist must establish a review process to ensure that final WRPOs—

(i) Achieve program goals and objectives, including ensuring long-term wetland protection and cost-effective restoration that maximizes wetland functions and values and wildlife benefits.

(ii) Are consistent with applicable provisions identified in the State-specific WRCG document and incorporate specific goals, objectives, and practices to address the restoration and management of the habitat and species for which the property was ranked and selected for funding.

Example: If the site scored high because of the potential or presence of a rare plant, the site must be restored and managed consistent with the protection of that plant.

(iii) Include specific wildlife habitat measures, including measures for endangered and threatened or at-risk species when appropriate.

(iv) Comply with NEPA, the Endangered Species Act (ESA), and other applicable Federal requirements.

(v) Consider State and local requirements.

(vi) Identify management and O&M activities for planned practices, and, if known, describe anticipated compatible-use activities, such as grazing and mowing, periodic vegetation management activities, and manipulation of water levels (see subpart P of this part).

(5) At a minimum, each WRPO should be reviewed by persons having expertise in wetland ecology, wildlife management, engineering, and other technical disciplines as needed based on the specific site.

(6) The final WRPO must consist of—

(i) Resource inventory.

(ii) Description of the objectives of restoration.

(iii) Acres of various existing and planned habitats (see subpart U of this part for habitat classification information).

(iv) Description of wetland and associated habitat types and functions being restored or enhanced, including any unique habitat types and target species for which the restoration is designed.

(v) Habitat needs of migratory birds and other species identified during the ranking process, including at-risk species and threatened and endangered species.

(vi) Management of hydrology and vegetation to maximize wetland functions and values, including wildlife benefits and water quality benefits throughout the year, as appropriate for the wetland type being restored.

Note: A CUA issued to the landowner is required for implementation of such management activities by the landowner or their designee, but detailed descriptions in the WRPO provide a comprehensive description of the overall management objectives of the enrolled area and allows for easy cross-reference between the WRPO and the applicable CUAs.

(vii) Description of conservation practices and activities required for restoration, enhancement, and protection of the easement or 30-year contract area, such as planting plans, water control structure locations and capacities, cut-and-fill recontouring designs, levee locations, and management provisions.

(viii) Schedule of dates for implementing practices and activities.

(ix) Payment rates, practice costs, and partner contributions.

(x) Date that FWS, State wildlife agency, and conservation district technical assistance was requested, and a brief summary of any input received.

(xi) Restoration plan map, following guidance in 180-NPPH, Part 600, Subpart C, Section 600.31, which includes the following:

- Field numbers
- Boundaries of the easement or contract area

- Acres of the easement or contract area
- Practice locations
- Land uses
- Restored wetlands
- Other lands
- Access routes
- Utility locations
- Cultural resource locations
- Planned wetland system

(xii) Photographs that document site conditions before, during, and after restoration, with location points of photography recorded on a map of the easement or contract area, and with the points located to adequately serve as future monitoring photo points.

(xiii) Documentation required for implementation and maintenance of the required practices, including job sheets, engineering designs, implementation requirements, and O&M sheets.

(xiv) Noxious weed and pest control strategies.

Note: The landowner is responsible for noxious weed control and emergency control of pests, as required by all Federal, State, and local laws. A control plan using integrated pest management (IPM) strategies must be approved in writing by NRCS prior to implementation by the landowner. A CUA is required for implementation of the IPM.

(xv) Management plan and O&M guidelines and requirements.

Note: See subpart P of this part for specific policy requirements on NRCS management and maintenance responsibilities.

E. WRPO Revisions

(1) The State conservationist may approve changes to the WRPO that do not affect provisions of the easement or 30-year contract. The State conservationist must seek input from the landowner and consider site-specific technical input from FWS and the conservation district. Any changes to the WRPO must meet ACEP-WRE program objectives be consistent with the State-specific WRCG, and must result in equal or greater wildlife benefits, wetland functions and values, and ecological and economic values.

(2) A revision to the final WRPO may result in the addition of new conservation practices, measures, or activities required for enhancement, maintenance, management, or repairs to protect the functions and values of the easement or 30-year contract area and were not included in the original final WRPO. Any new conservation practices must be entered into the Conservation Desktop (formerly Customer Service Toolkit) or successor NRCS planning platform and must be reflected on the most current planning maps.

528.135 Compliance With Other Requirements

A. General

(1) The purchase of an ACEP-WRE easement or execution of a 30-year contract alone does not require compliance, including mandatory consultation with State historic preservation officers (SHPOs) and federally recognized Tribes or their Tribal historic

preservation officers (THPOs) under section 106 of the National Historic Preservation Act (NHPA). This is because such action, in and of itself, is not a Federal undertaking that has the potential to affect historic properties (defined as historic or cultural sites, buildings, objects, and landscapes that meet the criteria for listing in the National Register of Historic Places).

(2) When NRCS plans to perform restoration activities or permit any actions on a ACEP-WRE easement or 30-year contract that has the potential to result in a direct or indirect physical change to a historic property, NRCS must comply with the section 106, as outlined in the implementing regulations (36 CFR Part 800) or State office procedures negotiated under a State-level agreement with SHPO and State Tribal consultation protocols required for other NRCS-assisted projects, as outlined in Title 190, National Cultural Resources Procedures Handbook, Part 601.

(i) NRCS personnel must follow their State procedures and work with their cultural resources specialists or coordinator to identify, evaluate, and protect historic properties that are in the area of potential effect for any restoration or enhancement activities.

(ii) Under no circumstances may NRCS personnel delegate these section-106 compliance responsibilities to a partner or other non-NRCS personnel.

(3) When a project raises complex cultural or archaeological resource-protection issues, NEPA issues, or ESA issues, the State should contact the national ACEP-WRE manager, who will consult with the appropriate NRCS National Headquarters specialist regarding the use of financial assistance funds to address such issues.

B. Public Drainage Systems

(1) The restoration plan must include the full extent of such public drainage rights and any specific agreements that may have been developed during the title-clearance process relative to how the public drainage entity plans to exercise those rights.

Example: A county drainage commissioner may have the full right to maintain a major drain through the ACEP-WRE easement area. However, during restoration planning, the commissioner may agree to specific maintenance approaches that would reduce the impact on wetland restoration. Such agreements should be confirmed through a subordination, a consent agreement or a similar document and referenced in the WRPO.

(2) The State conservationist must ensure that the ACEP-WRE restoration requirements do not conflict with public drainage rights, when applicable, and must clearly note the presence of such rights in the WRPO.

(3) NRCS assumes full responsibility for its actions to restore the easement or 30-year contract lands. However, NRCS does not assume any responsibility that the fee owner or other holder of the public drainage rights may have for carrying out subsequent drainage responsibility of those that fall outside of the possessory interests that the United States has obtained through easement or 30-year contract.

528.136 Design and Implementation

A. Design Requirements

(1) The engineering design and surveys required for installation of conservation practices or measures may be provided by NRCS, a qualified vendor, or a technical service provider (TSP). Design work provided by a vendor or TSP is considered a technical assistance activity. Financial assistance funds may not be used for engineering

design and survey expenses. Services may be acquired through Federal contracts or cooperative, contribution, or interagency agreements.

(2) Conservation practice design and implementation is accomplished in accordance with all NRCS policy and procedures, including applicable practice standards and specifications contained in the FOTG.

(3) The design must utilize conclusions from the ACEP-WRE site evaluations to prescribe and specify through the use of drawings, written specifications, instructions, and related documents, the implementation requirements for all conservation practices, components, measures, and activities included in the final WRPO.

(4) Structural measures must be designed and installed such that the reach and flow of water on floodplains is not significantly altered. Structural measures must also be designed to minimize future NRCS technical and financial costs for maintenance and repair.

(5) All manageable water-control structures must be accompanied by specific operation plans including any requirements and limitations to ensure the hydrology restoration benefits being assigned in ranking are fully achieved to the extent practical. Designs must contain hydrology restoration and enhancement features on the landscape that minimize the risk for mismanagement and vandalism problems and require only cost-effective, long-term management or maintenance.

(6) Where dikes and water control structures are being installed as an integral part of hydrology restoration plans, the engineering design should ensure that needed permanent and semi-permanent water areas cannot be inappropriately drained during the period the area is intended to be flooded if the structure is opened or otherwise vandalized.

Example: If flashboard riser structures are being installed, the risers must be located in a landscape position and at an elevation that will not defeat efforts to provide for permanent or semi-permanent water areas.

(7) The engineering design must also ensure that the restoration does not result in a hydrologic impact, such as additional flooding or inundation, outside of the easement or 30-year contract area footprint, unless those impacts occur on other easements held by NRCS and are compatible with the restoration objectives of such easements.

B. Management Plan Requirements

(1) All management activities and measures implemented by the fee title landowner or an agent acting on behalf of the landowner must be implemented pursuant to a CUA issued to the fee title landowner. A CUA may only be issued to a fee title landowner and must be issued to a current fee title landowner of record.

(2) To the extent possible, the prescription and authorization of management activities and measures should be handled in a comprehensive manner to minimize the administrative burden to the landowner and to NRCS. Therefore, the management plan component of the WRPO should be sufficiently comprehensive and detailed such that it can be used as a source and reference document for any CUAs that are issued.

Note: NRCS (or an agent acting on NRCS behalf and subject to NRCS requirements) may conduct any management activity or measure on the easement area pursuant to its rights under the easement.

(3) See subpart P of this part for more information about management plan requirements and the CUA process.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart O – ACEP-WRE Contract Administration

528.140 Overview

This subpart provides guidance on the administration of ACEP Wetland Reserve Easement (ACEP-WRE) easements and contracts, including contracting and fund management activities. In particular, this subpart addresses topics related to the development, obligation, and management of easement restoration agreements to implement wetland reserve plan of operations (WRPOs), payments for acquisition, related costs, and restoration, annual contract reviews, and cancellation and termination of conservation program contracts. All easement and 30-year contract obligations and payments for the acquisition of the easement or 30-year contract itself must comply with the most current easement acquisition enhanced internal controls policy. Notwithstanding the payment type, NRCS must not provide tax advice, including any representations about the tax implications of any easement, contract, or financial transaction. Several topics addressed in this subpart are covered in greater detail in other agency policy. Wherever possible, these policies have been cross-referenced.

528.141 Contracts to Implement the Wetland Reserve Plan of Operations (WRPO)

A. Overview of Contractual Arrangements to Implement the WRPO

(1) NRCS provides funding for implementing the WRPO, to the extent that NRCS determines that it is appropriate and in the public interest, based on the availability of funds. NRCS provides technical and financial assistance for implementing and establishing conservation practices, components, measures, and activities necessary for the restoration and enhancement of all enrollment types. NRCS also may provide technical and financial assistance for management and maintenance on existing easements and repairs for all enrollment types.

(2) To provide this technical and financial assistance, NRCS may use different procurement and payment methods, depending upon the individual enrollment type, service being obtained, phase of the project, and nature of the payment being made.

(3) In general, NRCS may obtain WRPO implementation from a vendor, through partners or other agencies, or through the landowner using appropriate methods, including but not limited to the following:

(i) Federal contracts, such as blanket purchase agreements, indefinite delivery and indefinite quantity contracts, or cost-type contracts (see Federal Acquisition Regulation (FAR) and applicable NRCS and FPAC-BC acquisitions and contracting policy, guidance, and customer guides).

(ii) Such agreements as cooperative agreements, contribution agreements, or interagency agreements (see Title 120, General Manual (GM), Part 401, “Agreements”; Title 120, Federal Grants and Cooperative Agreements Handbook (FGCAH), Part 600; National Instruction (NI)-120-301, “Processing Grants, Agreements, and Memorandums of Understanding”; NI-120-348, “NHQ Interagency Agreement Standard Operating Procedures”; and other applicable NRCS and FPAC-BC grants and agreements policy, guidance, and customer guides).

(iii) Conservation program contracts with the landowner.

(4) Policy and procedures unique to ACEP-WRE regarding conservation program contracting with the landowner are specified in this section and will prevail; additional information on procedures for conservation programs contracts can be found in Title 440, Conservation Program Manual (CPM), Part 530.

(5) "Conservation program contract" (CPC) is the collective term for the set of documents that comprise the agreement with the landowner to implement scheduled practices, which includes—

(i) Form NRCS-CPA-1202 "Conservation Program Contract," or successor form, which sets forth contract length and parties, and identifies attachments.

(ii) Form NRCS-CPA-1202-Appendix, "Appendix to the Conservation Program Contract," or successor appendix form, which identifies terms, special provisions, and violations.

(iii) Form NRCS-CPA-1155, "Conservation Plan Schedule of Operations," or successor form, along with required signature pages, and any applicable Form NRCS-CPA-1156, "Revision of Plan/Schedule of Operations or Modification of a Contract," or successor form, which set the practices, extents, and costs.

(iv) Standard Form (SF)-1199, "Direct Deposit," which is needed for obligation of funds.

B. Contractual Arrangements for WRPO Implementation

(1) The provision of ACEP-WRE funds for the implementation of practices, components, measures, and activities as described in the WRPO for restoration, enhancement, management, maintenance and repair of an easement or 30-year contract is conducted through an easement restoration agreement.

(2) Easement Restoration Agreement

(i) Under the terms of the easement or 30-year contract, NRCS acquires from the landowner the right to implement the restoration practices and activities identified in the WRPO. NRCS may provide funding to implement these activities through an easement restoration agreement entered into with the landowner or someone other than the landowner, as determined by NRCS. NRCS may use CPCs, Federal contracts, contribution agreements, cooperative agreements, interagency agreements, or other appropriate procurement methods to secure implementation of restoration practices and activities on easement and 30-year contract lands. NRCS refers to the documents used to secure restoration implementation on the easement or 30-year contract lands as the "easement restoration agreement."

(ii) When working with a landowner through a CPC, the planned practices, costs, and extents to implement the final restoration design are identified on Form NRCS-CPA-1155, "Conservation Plan Schedule of Operations." The costs are based on NRCS cost lists, including actual contractor's bids or the engineer's cost estimates for the individual project available at the time the NRCS-CPA-1155 is created. The CPC must be signed by all landowners or the appropriately authorized representative. Prior to approval by the State conservationists, the CPC must be reviewed to ensure that it is properly completed, has all required landowner signatures, and includes the start and end dates of the contract.

(iii) When NRCS implements the WRPO's restoration activities through a contribution, cooperative, interagency, or other agreement or through a Federal contract, the agreement or contract must include the specific work to be completed (e.g., practices or activities), amounts and costs of work to be completed, and the period of performance, and must be signed by the person or persons with authority to sign the agreement or contract documents on behalf of

the partner or vendor. The restoration costs will be based on estimated quantities included in the final WRPO and the associated costs derived from the NRCS cost list, the independent government cost estimate, or the budget estimate submitted by the partner or vendor at the time of selecting the partner or vendor and developing the agreement or Federal contract or at the time specific deliverables or task orders are issued against an existing agreement or Federal contract. The agreement or contract will be reviewed and approved by appropriate NRCS or FPAC-BC agreements or acquisitions staff to ensure its proper completion.

(iv) Once the appropriate CPC, agreement, or Federal contract documents are reviewed, determined complete and proper, and funds availability is verified, the State conservationist signs the appropriate obligating document. Funds availability is determined first from the preliminary obligation of restoration funds for the individual enrollment. If no funds remain in the preliminary obligation, then States may determine funds availability using their current fiscal year allocation. Funds are then obligated in the Financial Management Modernization Initiative (FMMI) or successor system, or in the Integrated Acquisition System (IAS) for Federal contracts.

C. Authorized Payment Levels by Enrollment Type

NRCS may share the costs of establishing or implementing conservation practices, components, measures, or activities outlined in the WRPO and specified in the easement restoration agreement, subject to the following restrictions:

(i) For perpetual easement enrollments, NRCS will offer to pay at least 75 percent, but not more than 100 percent of the costs.

(ii) For 30-year easement or less-than-permanent easements due to maximum duration allowed under State law and 30-year contract enrollments, NRCS will offer to pay at least 50 percent, but not more than 75 percent of the costs, except as described below.

(iii) For all easement enrollment types, NRCS may pay up to 100 percent of the costs for the repair or replacement of an eligible conservation practice or eligible activity if NRCS determines the practice or eligible activity is still needed and the disrepair or failure of the original practice or eligible activity was beyond the control of the participant.

528.142 Contract Development for WRPO Implementation

A. General

(1) NRCS may use any appropriate procurement method to implement the easement restoration agreement. The primary factor in determining the amount and type of funds to use is when the actual "bona fide need" for the funds exists. Allowance holders and fund certifiers must determine if the bona-fide needs rule is satisfied prior to entering into each obligation. Funds may not be obligated without a documented bona fide need.

(2) The bona fide need for NRCS to conduct restoration exists at the time Form NRCS-LTP-31, "Agreement for the Purchase of Conservation Easement" (APCE) or Form NRCS-LTP-40, "Agreement to Enter Contract for 30-Year Land Use" (AECLU) is signed. Therefore, NRCS may obligate funds for restoration at the time the acquisition funds are obligated.

(i) Prior to executing the APCE form or AECLU form and obligating acquisition funds, States must complete, at a minimum, a preliminary WRPO that includes

costs estimates sufficient to serve as the basis for the initial obligation of funds for restoration. The initial obligation of restoration funds based on the preliminary WRPO cost estimates is for internal NRCS accounting purposes only. Therefore, no payments may be made based on this obligation, no obligation documents may be signed by anyone other than NRCS, and no one is authorized to incur restoration costs, initiate restoration activities, or implement restoration practices based on this obligation.

(ii) States use the "Supplement to Agreement for the Purchase of Conservation Easement or 30-Year Contract for Preliminary Obligation of Restoration Funds" to complete the preliminary obligation of restoration funds as described below in section 528.142B. This preliminary obligation of restoration funds is completed to ensure the funds for the restoration of the easement, or 30-year contract lands are obligated in the same fiscal year the agreement to purchase (APCE or AECLU) is executed and the acquisition funds are obligated. The "Supplement to Agreement for the Purchase of Conservation Easement or 30-Year Contract for Preliminary Obligation of Restoration Funds" and either the APCE or AECLU should be executed concurrently (within days or weeks of each other) as both executed documents are needed to complete the preliminary obligation of the restoration funds.

(3) The final WRPO as approved by NRCS is the basis for the easement restoration agreement. Upon development of the final WRPO, the existing preliminary obligations for restoration are the initial basis for determining funds availability and whether additional funds from the current fiscal year allocation are also needed. The fully executed easement restoration agreement documents constitute the final obligating documents through which ACEP-WRE funds may be expended only after the easement is recorded or 30-year contract is executed. A final WRPO and fully executed easement restoration agreements must be in place before any restoration payments can be processed. Since a landowner, vendor, or partner may not be capable of implementing all the restoration practices required under the final WRPO, there may be one or more active easement restoration agreements for an individual easement or 30-year contract.

Example: NRCS may work directly with the landowner for tree planting under a CPC and with a construction firm under a Federal contract for installing water control structures. Both the CPC and the Federal contract are considered easement restoration agreements. The basis for the practices and activities included in each easement restoration agreement is the final WRPO or a properly completed and documented modification to the final WRPO.

(4) Funds for restoration may be obligated to an easement restoration agreement based on a final WRPO prior to easement closing or 30-year contract execution. However, States must advise landowners that any practices commenced prior to the easement's closing or 30-year contract's execution will not be eligible for payment without a waiver, as described below in paragraph D of this section.

(5) In cases where withholding of the landowner's share of restoration costs is required, such as for less-than-permanent enrollments, financial contributions from a partner may be used to satisfy all or a portion of the landowner's required share of the restoration costs. Any partner contributions provided to cover the landowners required share of restoration costs are not reflected in the ranking as a reduction in NRCS costs. The landowner's share of the restoration costs is still withheld from the easement payment as described below in section 528.143A(3) and any of the

withheld landowner funds remaining after the restoration is complete are returned to the landowner.

(6) ACEP-WRE does not prohibit the use of other non-USDA Federal funds as a match, though the other awarding Federal agency may.

B. Obligating Preliminary Easement Restoration Funds Prior to Development of the Final WRPO

(1) States complete a preliminary WRPO as part of the ranking and selection process. The preliminary WRPO will describe the planned practices and locations, estimate the quantities and extents, and include cost estimates as described in subpart L, section 528.112 of this part. States must account for the estimated cost of restoration when determining how many eligible applications to select for funding in a given fiscal year.

NOTE: The preliminary WRPO may be developed by NRCS staff, or by an appropriately qualified NRCS-approved third party designated to assist in the development of the preliminary WRPO.

(2) States complete the supplement for preliminary obligation of restoration funds based on the preliminary WRPO (see subpart U of this part for the "Supplement to Agreement for the Purchase of Conservation Easement or 30-Year Contract for Preliminary Obligation of Restoration Funds"). The costs and extents used in the preliminary WRPO are estimates and are refined upon further planning in development of the final WRPO and the associated easement restoration agreements.

(3) The supplement for preliminary obligation of restoration funds is strictly an internal NRCS budgeting document and is not signed by the landowners.

(4) States document funds availability on the "Supplement to Agreement for the Purchase of Conservation Easement or 30-Year Contract for Preliminary Obligation of Restoration Funds" using budget object classification code (BOC) 3212 and the same work breakdown structure (WBS) code for the restoration funds as the agreement to purchase.

(5) For all WRE agreements to purchase executed in fiscal year 2016 and later, both the agreement to purchase (APCE or AECLU) and the associated supplement for preliminary obligation of restoration funds must be submitted at the same time to the FPAC-BC Payment Operations Section (POS) (formerly accounts payable team) following the procedures outlined in the most current customer guide. The preliminary obligation of restoration funds will not be obligated directly to the landowners.

(6) While the easement or 30-year contract is in the process of being acquired, States develop the final WRPO in accordance with the timing required in subpart N, section 528.134A(5) of this part.

(7) Each fiscal year States must review and determine whether the preliminary obligation of restoration funds is still needed and document this determination as part of an annual review of open obligations. These annual reviews and determinations must occur until the final WRPO is completed and the associated easement restoration agreements are executed or the agreement to purchase (APCE or AECLU) expires or is cancelled. If restoration funds are determined to no longer be needed, they must be deobligated according to the procedures in the current FPAC-BC POS customer guide. Restoration funds may only remain obligated to the supplement for the 3 fiscal years following the fiscal year the agreement to purchase is entered into.

(8) Upon completion of a final WRPO and after the easement closing or 30-year contract execution, States must complete the easement restoration agreement documents used

to implement the restoration and obtain the necessary State and national approvals based on easement restoration agreement type.

(9) The supplement for preliminary obligation of restoration funds is used to ensure there are adequate funds available for subsequent obligation to the individual easement restoration agreements used to implement the final WRPO. States obtain funds availability for each individual easement restoration agreement by first looking to the preliminary obligation of restoration funds for that enrollment. States must not request a separate funds reservation for the easement restoration agreement if sufficient funds are already obligated to a supplement for preliminary obligation for that enrollment. If the preliminary obligation does not have sufficient funds to cover the final restoration costs, States must use their available allocated funds, or request additional funds as needed, to cover the final restoration costs.

(10) States submit the supplement for preliminary obligation of restoration funds, the completed easement restoration agreement, the vendor information for the obligation of the easement restoration agreement, and other required documents to FPAC-BC POS. FPAC-BC POS deobligates all or a portion of the preliminary obligation of restoration funds in FMMI and documents the deobligation on the supplement. Based on the type of easement restoration agreement, States provide FPAC-BC POS with the following information:

(i) For restoration conducted through a Federal contract, States have 5 business days to enter a requisition request into the IAS from the time of FPAC-BC POS notification that funds were deobligated from the preliminary obligation. Therefore, States entering into Federal contracts must work with the FPAC-BC Acquisition Division (AD) well in advance of the deobligation of the preliminary restoration funds to ensure that the contracts for services are in place at the time of the requisition.

(ii) For restoration conducted through a landowner CPC, the final obligation of restoration funds to the vendor based on the final WRPO and the associated easement restoration agreement obligating documents occurs concurrent with the deobligation of the preliminary obligation of those same restoration funds from the supplement.

(iii) For restoration conducted by a third party through a cooperative, contribution, or interagency agreement, the final obligation of restoration funds to the vendor based on the final WRPO occurs as follows:

- The State must set up a funds precommitment using funds from the preliminary obligation, and
- Enter the request for the agreement into the EZ Fed Grants system (eFG) for development of the agreement by the FPAC-BC Grants and Agreements Division (GAD).

(11) Under no circumstances may the supplement for preliminary obligation of restoration funds be used to authorize or initiate restoration activities on an offered easement or 30-year contract area. Additionally, no payments for restoration activities may be made from the preliminary obligation of restoration funds.

C. Easement Restoration Agreement Practice Implementation Schedule

(1) Any needed easement restoration agreements should be entered into within 1 year of the easement recording or 30-year contract execution date. The easement restoration agreement must include a practice scheduled to commence within the first 12 months of the easement restoration agreement. The practice schedules in the easement

restoration agreements must also ensure that all restoration practices are complete within 3 years of the easement recording or 30-year contract execution date.

(2) If the contract or agreement holder fails to commence a practice during the first 12 months or otherwise fails to follow the easement restoration agreement schedule, a waiver or extension may be granted if requested by the contract or agreement holder and approved by NRCS.

(3) If at any time the contract or agreement holder fails to complete the agreed-to items as scheduled, and a waiver or extension is not requested or is requested and denied, NRCS may terminate the easement restoration agreement in accordance with the applicable contracting or agreement procedures. NRCS may select a different contracting or agreement method through a new easement restoration agreement to secure implementation of the final WRPO.

(4) If restoration activities will not be completed within 3 years of the easement recording or 30-year contract execution date, the State conservationist must document the extenuating circumstances and their approval to allow the implementation of the restoration practices and activities to occur over a longer-time period.

D. Practices Commenced Prior to Easement Restoration Agreement Approval

(1) On land enrolled in ACEP-WRE under an active, valid agreement to purchase (APCE or AECLU), restoration practices started or completed before easement recording or 30-year contract execution date and easement restoration agreement approval date are not eligible for ACEP-WRE payments. Starting a practice or engaging the services of a technical service provider before the applicable easement restoration agreement is approved by NRCS renders an applicant ineligible for payment for those practices unless the State conservationist grants a waiver. A waiver may not be granted for practices that commenced prior to application for the program or prior to the approval of the waiver.

(2) Requests for a waiver must be made by the landowner in writing. Waivers may be considered in special cases and for meritorious reasons for applications that meet all ACEP-WRE land and landowner eligibility requirements. Meritorious reasons may include—

(i) Alleviation of imminent and significant environmental problems.

(ii) Prevention of damage to life or property.

(iii) Seasonal weather constraints.

(3) If a waiver is granted, the State conservationist will advise the landowner that—

(i) Funding is only provided after the easement is closed or 30-year contract is executed and only if all other conditions are met.

(ii) The applicant is liable for all costs incurred if an easement restoration agreement is not signed by both parties.

(iii) Work must be applied according to NRCS-approved standards, specifications, and designs.

(iv) Work must be completed in accordance with an approved final WRPO.

(v) The waiver expires on a date determined by the State conservationist, but no later than 12 months after the waiver is granted.

(4) The landowner must sign the following acknowledgment statement (see subpart U of this part for sample early-implementation waiver letter), which will be filed in the official easement case file:

"I/We acknowledge that the implementation of restoration practices identified below on the land enrolled in ACEP-WRE is at my/our own risk and that my/our ability to

receive ACEP-WRE funding for such practices is contingent upon NRCS and the landowner [closing on the easement or executing the 30-year contract] and entering into an easement restoration agreement. I/we understand that payment may only be provided based on NRCS determining that the practice or practices are established according to the final wetlands reserve plan of operations and NRCS standards and specifications. I/We further understand that we are responsible for obtaining all necessary Federal, State, and local authorizations and permits needed to implement such restoration practices."

(5) Restoration payments for practices certified by NRCS or a technical service provider are not issued until after the easement is recorded or the 30-year contract is executed and easement restoration agreement is signed by the landowner and the State conservationist. Notwithstanding the waiver, NRCS will not make payment for practices or components if any of the following apply:
(i) The intended acreage is determined ineligible for program participation
(ii) NRCS does not record the easement or execute the 30-year contract
(iii) NRCS and the landowner fail to enter into an easement restoration agreement
(iv) The practices or components are not applied according to NRCS standards and specifications or final WRPO provisions
(v) The practice was commenced prior to application or prior to receipt of a waiver

E. Procurement of Compliance Activities Related to the National Environmental Policy Act, the National Historic Preservation Act, and the Endangered Species Act

(1) Identification and evaluation of historic, cultural, and other environmental resources within an ACEP-WRE project area is an essential component of NRCS conservation planning and environmental compliance responsibilities. State conservationists use technical assistance funds for these activities within a project's area of potential effect. Technical assistance activities include resource identification and evaluation of significance. Technical assistance funds are also used for follow-up activities that include cultural resources investigations and biological assessments needed before applying the conservation practice.

(2) In circumstances where the conservation planning process reveals that a particular ACEP-WRE project will require unusual, extensive, or complex investigations or assessments to meet NRCS environmental compliance responsibilities, the State conservationist may use ACEP-WRE financial assistance funds to obtain these services when this work is being performed by non-NRCS personnel. These compliance activities would normally occur during step 8 (implementation) of the conservation planning process. For example, ACEP-WRE financial assistance funds may be used for—
(i) Extended cultural resource evaluation studies, resource treatment, and data recovery, including site excavation and recording.
(ii) Meeting terms and conditions identified in a memorandum of agreement or programmatic memorandum of agreement with the State historic preservation officer, Tribal historic preservation officer, or the Advisory Council on Historic Preservation, in accordance with 36 CFR Part 800.
(iii) Obtaining the services of a biologist certified to handle federally listed species, through service approval from the agency with jurisdiction (U.S. Fish and Wildlife Service or National Marine Fisheries Service) or as a holder of an incidental take permit under the Endangered Species Act, to be onsite as needed to comply with specific requirements set forth in a biological opinion for the

listed species found or anticipated to be on the site that may be impacted during restoration activities.

(iv) Meeting terms and conditions identified in a biological opinion.

(v) Meeting mitigation measures identified in an NRCS environmental evaluation.

(3) All cultural, historic, and other environmental resource compliance services that use financial assistance funds are procured by NRCS through an agreement or Federal contract. The use of landowner CPCs for procuring these services is not authorized. It is not appropriate to use financial assistance funds for services and activities typically provided by NRCS personnel.

(4) In all cases in which financial assistance funds are to be used for cultural, historic, or other environmental resource compliance, the State conservationist must explicitly approve, in writing, the expenditure and ensure that the costs are reasonable, appropriate, and consistent with NRCS policy. The State conservationist may not delegate this decision.

528.143 Payments

A. Easement and 30-Year Contract – Acquisition Payments

(1) General

(i) State conservationists, with support from State and national easement and financial staff, are responsible to ensure easement and 30-year contract acquisitions are compliant with internal controls requirements and conducted pursuant to applicable laws and policy.

(ii) After completion of required internal control reviews, the agreement to purchase (APCE or AECLU) may be executed by the landowner and NRCS, and acquisition funds for the easement or 30-year contract obligated to the landowner.

(iii) NRCS calculates and identifies in the APCE or AECLU the total estimated easement or 30-year contract consideration amount based on the estimated acres and the applicable easement compensation values as described in subpart M, section 528.122F of this part.

(iv) Based on the final determination of acreage, the enrollment type, and the application of any landowner-offered amount to accept less funding made after the agreement to purchase was originally executed, NRCS calculates the final consideration amount. NRCS identifies in the "Warranty Easement Deed" or "30-year Contract" the final total acreage based on the approved boundary survey of the easement or 30-year contract area and the full easement consideration amount as described in subpart M, section 528.122G of this part. Documentation identifying the final acreage and consideration amount must be kept in the easement case file and submitted to the appropriate financial specialist for adjustment of the obligation. (See subpart U of this part for sample easement and contract compensation adjustment document.)

(v) If a commensurate reduction is required due to an adjusted gross income (AGI)-ineligible member of an otherwise AGI-eligible landowner-legal entity as described in subpart K, section 528.103C of this part, the reduction is applied to the payment and is not reflected in the consideration amounts shown on the APCE or AECLU form, or the "Warranty Easement Deed" or "30-year Contract." The APCE or AECLU form and the "Warranty Easement Deed" or "30-year Contract" must identify the appropriately calculated full consideration amount with no commensurate reduction applied. Similarly, the obligation

amount is based on the full consideration amount and is not reduced based on an anticipated commensurate reduction. At the time of payment, the amount of any applicable commensurate reduction is applied against the full calculated consideration amount stated on the "Warranty Easement Deed " or "30-year Contract." At the time the easement or 30-year contract payment is requested, the easement program specialist must provide the financial specialist with the proper payment amount reflecting the applied commensurate reduction and any remaining acquisition funds must be deobligated after the payment is issued.

(vi) NRCS must not acquire any easement or 30-year contract unless the landowner accepts the amount of the easement or 30-year contract payment that NRCS offers. The easement payment may or may not equal the fair market value of the interests and rights to be conveyed by the landowner under the easement.

(2) Issuing the Easement Payment

(i) An easement payment may only be issued after NRCS has received a title opinion from the Office of the General Counsel (OGC) setting forth the requirements to secure sufficient title to the land and NRCS has determined that the requirements set forth in the OGC title opinion can be satisfied. A copy of the OGC title opinion must be provided to the financial specialist for easement payment processing. A separate Form NRCS-CPA-1245, "Application for Payment," or successor form is not required in order to process the easement payment.

(ii) Easement payments are issued through a closing agent unless an alternative method has been agreed to by the State, Easement Programs Division (EPD), and OGC per subpart M, section 528.125G of this part.

Note: 30-year contract payments are issued directly to the landowner. Payments are made using electronic fund transfers. See subpart M of this part for additional information.

(iii) The APCE form authorizes NRCS to provide payment to the landowner through an escrow account managed by the closing agent. The landowner approves payment to the escrow account through the execution of the APCE form; therefore, a separate Form CCC-36, "Assignment of Payment," or successor form) does not need to be executed by the landowner.

(iv) A completed copy of the ACEP-WRE "Easement Acquisition Internal Controls Review Certification Checklist" is required to process the easement payment. The financial specialist will identify the closing agent as an assignee or alternate payee in FMMI.

(v) The closing agent handles the funds in the escrow account and issues the appropriate Internal Revenue Service (IRS) Form 1099 in accordance with NRCS closing instructions and OGC title opinion for ultimate disbursement of the proceeds to the landowner and provide NRCS documentation of disbursement of those funds, such as a Form HUD-1, "Settlement Statement," or closing disbursement statement. See subpart M of this part for more detailed information about the closing process.

(3) Withholding Landowners Restoration Costs from the Acquisition Payment

(i) For all less-than-permanent easements and 30-year contract enrollments, sufficient funds must be withheld from the easement or 30-year contract payment to cover the landowner's share of the restoration costs based on the final WRPO. The easement will not be closed or the 30-year contract will not be executed until a final WRPO has been completed and the easement restoration agreement cost estimates have been determined.

(ii) Based on the final restoration cost estimates, NRCS holds the landowner's share of the restoration cost in an appropriate account. Funds withheld from the easement payment for the landowner's share of restoration costs must be documented on the closing or settlement statement.

(iii) FPAC-BC and NRCS financial management staff must follow current policy on processing and monitoring easement payment withholdings for landowners' restoration costs. States must coordinate with the appropriate financial management staff to administer the payment and tracking of these funds. Any excess funds remaining at the completion of the restoration are issued to the landowner.

Note: If NRCS determines during implementation that the restoration costs are higher than originally estimated, NRCS must obtain the proportional additional funds from the landowner prior to proceeding with the practices or activities that will incur the additional costs. NRCS has no mechanism to exceed the 75-percent limit for restoration costs on a less-than-permanent easement or 30-year contract. Therefore, it is imperative that NRCS have comprehensive, complete, and accurate cost estimates prior to easement closing or 30-year contract execution to ensure sufficient funds are withheld from the easement or 30-year contract payment and to avoid the need for additional funds to be obtained from the landowner after the easement has closed or the 30-year contract has been executed.

(iv) The IRS Form 1099 received by the landowner must reflect the full amount of the consideration identified on the warranty easement deed or 30-year contract. The value stated on Form 1099 is not reduced by the amount held in reserve for restoration.

(v) The costs identified in the easement restoration agreement must reflect the percent of the practice costs that will be paid by NRCS using a combination of the obligated NRCS funds (up to 75 percent) and the withheld landowner funds.

(4) Easement or 30-Year Contract Payment Schedule

(i) For easements or 30-year contracts valued at $500,000 or less, NRCS provides a single payment or up to 10 annual installment payments, as requested by the landowner and as specified in the APCE or AECLU.

(ii) For easements or 30-year contracts valued at more than $500,000, NRCS makes a single payment unless annual installment payments are requested by the landowner. The landowner must specify on the APCE or AECLU form, the number, between a minimum of 5 to a maximum of 10, of annual installment payments being requested.

(iii) When the landowner elects annual installment payments, after the first installment payment, subsequent annual installment payments are paid after October 1 of the calendar year following the first installment payment.

(iv) All landowners for an individual easement or 30-year contract must agree on either a lump sum or annual installment payments. Payments to individual landowners under a single transaction may not be split between lump-sum single payments and annual installments.

(v) NRCS must explain the installment payment options, limitations, and requirements to the landowner and ensure that the agreed-to number of installment payments is entered correctly on the APCE or AECLU form prior to execution by the State conservationist.

(vi) The landowner must be issued an IRS Form 1099 for each year a payment is issued. The IRS Form 1099 for the initial easement payment is issued by the

closing agent, and subsequent IRS Form 1099s are issued by FPAC-BC financial staff for all annual installment payments in the years following the initial easement payment.

(vii) Landowners that receive annual installment payments may request at any time to receive a lump sum of the total remaining amount, provided all landowners agree to the receipt of the total remainder of the funds. States must coordinate with the FPAC-BC financial staff to issue the remainder of the funds to the appropriate recipients and issue the final IRS Form 1099. States must also reflect the change in the easement business tool (e.g., National Easement Staging Tool (NEST)).

B. Easement and 30-Year Contract – Acquisition-Related Costs

(1) NRCS may pay up to 100 percent of costs related to acquiring and perfecting an easement or 30-year contract, such as preliminary title searches, environmental record searches, areawide market analysis, a Uniform Standards for Professional Appraisal Practices (USPAP) appraisals, closing costs, legal boundary surveys and descriptions, and final title insurance. NRCS may procure these services by contracting directly with the vendor, entering into an agreement with a partner or other agency or, for certain items, through an agreement with the landowner. All acquisition-related costs for products completed by qualified non-NRCS personnel use financial assistance funds.

(2) Payments for these acquisition-related costs should be issued only after the product has been delivered to and reviewed by appropriate NRCS personnel, and a determination has been made that the product meets the applicable specifications, statements of work, task order, agreement terms, or other NRCS instructions. For example, payments for—

(i) Preliminary title search information should only be issued after the title document has been reviewed to determine, at minimum, that the correct and entire offered area has been searched and that all underlying documents identified in the search have been received.

(ii) Areawide market analysis should only be issued after the product has been reviewed by an authorized official who has confirmed that it meets applicable NRCS policy and statement of work.

(iii) Individual appraisals should only be issued after acceptance by a technical reviewer, National Headquarters national appraiser, or both, if required (see 440-CPM, Part 527, Subparts E and F, for appraisal review and approval requirements).

(iv) Easement boundary surveys should only be issued after the meeting in the field with the landowner to confirm that the surveyed area is correct, the verification has been documented to the file, and all paper and electronic copies of the boundary survey have been received and reviewed to determine compliance with specifications and scope of work for easement boundary surveys.

(v) Closing services should only be issued after the final title insurance policy has been reviewed to determine compliance with NRCS closing instructions and OGC title opinion requirements (see subpart U of this part for example NRCS closing instructions letter).

(3) A copy of an invoice or receipt and any required acceptance or review documentation must be included with the appropriate payment request form. The individual payment request forms will depend on the procurement method used. Refer to relevant agency and FPAC-BC policy governing Federal contracts (FAR) or agreements (120-GM, Part 401; 120-FGCAH-600; NI-120-301; NI-120-348; or other

applicable grants and agreements policy, guidance, and customer guides) based on the procurement method used. If items were obtained through an agreement with the landowner, such as the easement boundary survey, Form NRCS-CPA-1245 or successor form and a copy of the receipts or invoices must be submitted by the landowner.

C. WRPO Implementation Payments

(1) Restoration payments for conservation practices, components, or activities—
(i) Are made only after NRCS certifies that the conservation practices, functional components, or activities are completed satisfactorily, either in accordance with standards and specifications for conservation practices or components, or in accordance with the WRPO for activities.
(ii) Are based on the actual cost at the time the practice is installed.
(iii) Must be accompanied by supporting receipts or invoices.

(2) Partial practice payments are not allowed; therefore, incremental payments may not be made if the practice does not function until fully installed. However, a single practice with either multiple functional components or extents that can be completed and certified as functional as installed, may be scheduled and paid for as separate line items in a contract.
(i) Example 1-Partial Payment.—If the wetland restoration design calls for a dike to be installed around the perimeter of a 50-acre wetland unit, payment may not be issued at the 50-percent completion point when the dike has only been completed on two sides of the field, as it will not function as designed.
(ii) Example 2-Component.—If the wetland restoration design calls for a dike to be installed on a 50-acre parcel that will create two 25-acre wetland units, these could be scheduled as two separate line items and payment could be issued when the dike around one of the 25-acre wetland units has been completed, as it would be a functional unit as designed and installed.

(3) Conservation Program Contracts (CPC)
(i) Payments made for conservation practices or activities implemented through CPCs with the landowner are based on the information provided on the Form NRCS-CPA-1245 or successor form. The form is prepared by NRCS and signed by the landowner or authorized representative. The landowner is established as the vendor in FMMI and payments are made to the vendor unless payment has been assigned through a properly executed "Assignment of Payment" (Form CCC-36 or successor form) to another person or entity.
(ii) Adjustments to the total obligation are not needed to deobligate funds remaining as individual contract line item payments are made. Funds will only be deobligated from the CPC if there are funds remaining after the CPC has been fully completed or a modification to the CPC is executed that results in a downward adjustment to the total amount obligated.

(4) Contribution, Cooperative, and Interagency Agreements

Payments for conservation practices or activities completed through—

- A contribution or cooperative agreement payment request are made by submitting a completed payment request package (e.g., SF-270, "Request for Advance or Reimbursement." with specific documentation), as stipulated in 120-FGCAH-600, Subpart E, Section 600.43, "Payments" and applicable FPAC-BC GAD customer guides.

- An interagency agreement made in accordance with guidance in the standard operating procedures issued with NI-120-348 and applicable FPAC-BC GAD customer guides.

(5) Federal Contracts

Federal contracts must be entered through IAS and payments will be issued through the Invoice Processing Platform (IPP) or successor system. FPAC-BC acquisitions division (AD) guidance, along with FAR, IAS, and IPP policy and procedures must be followed regarding what forms and documents are required to initiate and issue a payment.

D. Application of Adjusted Gross Income (AGI) and Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Payment Eligibility Criteria and Payment Limitations to Landowners and Others

(1) Payments to Landowners

NRCS first determines a landowner's eligibility for payment under the AGI provisions and the HELC/WC provisions at the time of application to ensure that NRCS is working with an eligible landowner. The landowner's AGI determination is rechecked at the time of enrollment and remains in effect for the duration of the enrollment unless there is a change as described in subpart M, section 528.121H of this part. The landowner's HELC/WC determination must be rechecked at the time of enrollment and at the time of each payment, as provided below.

- Easement and 30-Year Contract Payments
  - When an easement payment or 30-year contract payment, including each installment payment, is to be made to any landowner, the landowner's eligibility under the HELC/WC provisions is rechecked to ensure that all landowners as listed on the current ownership documentation are eligible for the payment. NRCS will not make the easement or 30-year contract payment if any landowner is not compliant with the HELC/WC provisions when payment is requested.
  - Prior to easement closing or execution of the 30-year contract, a landowner may request to withdraw from program enrollment if NRCS determines that the landowner is ineligible for payment under the HELC/WC provisions. If a landowner withdraws from ACEP-WRE enrollment based upon the NRCS determination of ineligibility for payment under the HELC/WC provisions, the landowner is in violation of the APCE or AECLU.
- Easement Restoration Agreement through CPC
  - NRCS does not need to revisit the landowner's AGI eligibility determination if NRCS enters into an easement restoration agreement with the landowner through a CPC, since the AGI determination is in effect for the duration of the program enrollment. However, NRCS must revisit the landowner's HELC/WC eligibility at the time an easement restoration agreement is entered through a CPC. If a landowner is determined ineligible under the HELC/WC provisions after easement closing, NRCS may implement the easement restoration agreement through a Federal contract or an agreement (contribution, cooperative, or interagency). (See paragraph (2) below)
  - When an easement restoration agreement payment is made to a landowner through a CPC, the landowner's eligibility under the HELC/WC provisions

is rechecked to ensure that all landowners are eligible for the payment. If a landowner is not compliant with the HELC/WC provisions when payments are requested, NRCS will not pay the landowner, and payments for practices completed by the landowner during the period of ineligibility are forfeited, unless a good-faith exemption has been granted in accordance with 7 CFR Part 12. Modification of the CPC to reschedule practices to avoid forfeiture of payment because of HELC/WC compliance issues is not allowed.

(2) Payments to Others

(i) Under ACEP-WRE, a landowner must meet the AGI and HELC/WC provisions of the Food Security Act of 1985, as amended, to be eligible for payment, as described above.

(ii) Subsequent to easement recordation or 30-year contract execution and payment, the eligibility of the original landowner or ownership of the land may change. However, it does not further the purposes of the program to acquire permanent or long-term protection on an area that is not able to be restored due to postclosing changes in the circumstances of the original landowner or the fee title ownership. Therefore, NRCS and the landowner must agree that, at the time of enrollment, under the terms of the warranty easement deed or 30-year contract, NRCS may restore, protect, enhance, maintain, and manage activities on the easement or contract area by providing financial assistance directly to the current owner of the land, or as determined necessary by NRCS, through another person or entity.

(iii) NRCS may make payments to restore and maintain the easement or 30-year contract area to someone other than the original landowner, even if that other person or entity does not meet payment eligibility criteria. In particular, NRCS may make payments to others without regard to any other provision of law and in a manner NRCS determines is fair and reasonable. In this way, NRCS is able to ensure that all properties enrolled through an easement or 30-year contract are able to be restored as contemplated by the ACEP-WRE statute, despite events subsequent to easement recordation or 30-year contract execution.

(iv) If NRCS enters into a CPC with a subsequent landowner, a Federal contract, or an agreement (contribution, cooperative, or interagency) NRCS may make payment under the terms of those types of easement restoration agreements without regard to the whether the payment recipient would meet the payment eligibility provisions of the Food Security Act of 1985.

Example: A State's department of natural resources (DNR) purchases fee title from the original ACEP-WRE participant. NRCS may enter into an easement restoration agreement with the DNR to implement the restoration practices and make payment to that agency, even though DNR is a State agency and would not have been eligible for enrollment.

(3) Thirty-Year Easement and 30-Year Contract Restoration Payment Limitations

(i) Restoration payments remain subject to the statutory limitations regarding the level of assistance that may be made, whether such assistance is made directly to the landowner or through another person or entity. Therefore, for less-than-permanent easements and 30-year contracts, NRCS may not provide more than 75 percent of the cost of conservation practices, components, or activities implemented for the purpose of establishing the restoration, as specified in the WRPO and easement restoration agreement, without regard to ownership or payee.

(ii) NRCS may pay up to 100 percent of the repair and replacement costs associated with less-than-permanent easements. NRCS has discretion to pay up to 100 percent of repair and replacement costs on these easements only after the restoration implementation and establishment period has ended and if NRCS determines the practice is still needed and the failure of the practice was beyond the control of the landowner.

528.144 Modifications to the Easement Restoration Agreement

A. Modifications to the final WRPO

A revision of the final WRPO may be required before a modification to the easement restoration agreement can be completed. If particular practices or activities are not already identified in the WRPO, a revision to the WRPO may be needed to prepare new easement restoration agreements for new work, such as supplemental restoration, enhancements, maintenance, and repairs. See subpart N, section 528.134E of this part for guidance.

B. Modifications to Easement Restoration Agreements – Processing Contract Change Requests

(1) General – Determination of Scope

(i) For purposes of this section, the term "contract" means any CPC, cooperative, contribution, or interagency agreement, or Federal contract used to implement an easement restoration agreement.

(ii) When the original terms of a contract obligation need to be altered, a contract change request must be made. The request must be analyzed by the State program manager to determine if the change or changes requested are within the scope of the original contract or are of sufficient magnitude to be considered outside the scope of the original contract. The basis for the change must be clearly stated in the contract change request.

(iii) The determination of scope is the key to selecting the proper contracting procedures to be used to accommodate the change request and the proper funds to be provided for the request. Contract change requests that are generally considered within-scope are those that—

- Are used to carry out the original intent of the contract.
- Will treat the originally identified resource concerns.
- Are of a reasonable magnitude.

(iv) Contract change requests that are generally considered outside the scope of the original contract are those that—

- Were never contemplated in the original contract.
- Change or add resource concerns and the practices and activities to treat them.
- Are of a magnitude that is beyond the scope of what was contemplated in the original contract.
- Are repairs, replacement, or maintenance of existing, established practices.

(2) Contracting Procedure Based on Scope Determination

(i) If a change request is determined to be within the scope of the existing contract, then a contract modification may be completed to make the changes. If the change request is determined to be outside the scope of the original contract, then a new contract must be used to accomplish the work or task.

(ii) Executing modifications to existing contracts for approved in-scope changes will depend upon the specific contract vehicle, as indicated below. Modifications to existing contracts have the same signatory requirements as the original contract. Additional funds, if needed, for any modifications must be documented as available prior to obtaining signatures and obligation.

- Federal contract modifications will be entered into IAS in accordance with appropriate FARs and processed in accordance with FPAC-BC and NRCS requirements for Federal contracts.
- CPC modifications will be completed on a Form NRCS-CPA-1156, "Revision of Plan/Schedule of Operations or Modification of a Contract," or successor form. Funds for the contract change, if needed, are obligated once the landowner and authorized NRCS official sign the required forms.
- Contribution, cooperative, and interagency agreement modifications will be made on the appropriate forms and according to procedures in 120-FGCAH and other applicable FPAC-BC GAD guidance.

(iii) Contract change requests determined to be outside the scope of the original contract require a new contract. The contract type and any competition requirements will depend upon the contract vehicle used.

- Federal Contracts.—If the proposed change is determined to be "outside-of-scope," either a new contract for the changed portion must be competed or the entire contract with the addition of the changes must be recompeted in accordance with the FAR by an authorized contracting officer. If deemed appropriate by the contracting officer, there may be instances in which an outside-of-scope modification may be authorized, based upon the concept of different site conditions or other criteria
- CPC With the Landowner.—A new CPC, consisting of all component documents, the contract (Form NRCS-CPA-1202, "Conservation Program Contract," or successor form), NRCS-CPA-1202 appendix, and schedule of operations (Form NRCS-CPA-1155 or successor form), must be generated, a new CPC contract number provided, and signatures obtained from the landowner. Funds may be obligated once the landowner and NRCS authorized officials' signatures are obtained.
- Contribution, Cooperative, or Interagency Agreements—A new agreement must be generated and processed according to procedures in 120-FGCAH, and other applicable FPAC-BC GAD guidance.

(3) Funding Change Requests

(i) Once a determination has been made regarding scope by the authorized official, State program staff and appropriate State and national administrative staff must coordinate and follow current financial management policies for obligation, adjustment, and deobligation procedures.

(ii) The total cost of each individual easement restoration agreement (CPC, agreement, Federal contract) is obligated in FMMI as a single, total obligation amount. The total obligation amount in FMMI for the individual easement restoration agreement is often comprised of individual component line items for individual conservation practices (i.e., individual line items). Upward or downward adjustments for individual conservation practices (individual line items) within easement restoration agreements may be made without adjusting the overall total obligation in FMMI.

- Adjustments to increase the total obligation in FMMI may only be made when NRCS determines additional funds are needed to fully implement the

planned practices, changes are determined to be within the scope of the original easement restoration agreement, and appropriate modifications to the easement restoration agreement are executed.

- Adjustments to decrease the total obligation in FMMI may be made once the easement restoration agreement has been fully implemented and all scheduled restoration practices have been completed, at which time any remaining funds will be deobligated from the FMMI obligation for the individual easement restoration agreement. A portion of the funds may be deobligated if the easement restoration agreement is modified downward to adjust the total amount obligated to the agreement due to practices that are determined to no longer be necessary to meet the program purposes and goals for the easement or 30-year contract area.

(4) Types of Contract Changes and the Authorizing Official

(i) State conservationists must establish procedures and identify staff to perform initial scope determinations and second-level reviews of in-scope determinations. Although the State conservationist is responsible for the second-level review and concurrence, he or she may delegate this authority. The authority may not be delegated lower than the member of the State management team responsible for ACEP-WRE, which in most States is the Assistant State conservationist. Figure 528-O1 below provides examples of change requests and whether they are generally considered within-scope or outside-of-scope requests.

(ii) It is critical to remember that the types of **situations identified below as outside-of-scope requests may not be considered within-scope requests**. However, it is possible that a change request shown below as generally being a within-scope request could be considered an outside-of-scope request when applying the "reasonable" test. For example, a cost overrun due to inflation is generally considered a within-scope request. However, it is possible that the magnitude of the change could cause the request to fail the reasonable test, so the change would be considered outside-of-scope.

(iii) Once the existing contract has been completed, all requests for additional funds for practices are new procurements and require the use of new contract instruments. This includes requests for additional restoration or enhancement practices or when the initial restoration did not adequately restore the site as anticipated, provided this determination is made after the original contract is completed.

(iv) Although figure 528-O1 below is primarily focused on restoration activities, the same principles apply to agreements to purchase that NRCS executes with the landowner, and to any contract for any service in ACEP-WRE, such as closing services, acquisition, surveys, or appraisals, and to contracts and agreements with third parties to conduct activities for NRCS.

Example: NRCS has a signed APCE, but prior to easement closing the landowner decides to offer twice the amount of acres for enrollment. This increase was never considered by the landowner or NRCS at the time of application and would double the size of the easement. This would be considered an outside-of-scope change and require a new agreement to purchase to be executed between the landowner and NRCS for the full extent of the area to be enrolled and subject to eligibility determinations made in the fiscal year the new agreement to purchase is executed.

(v) In figure 528.O1 below—

- All determinations in the "within-scope" or "outside-of-scope" columns are based on passing the reasonable test.
- "Practice" should be read as "practice, component, or activity."

Figure 528-O1

Type of Request	Additional Examples or Description	Within Scope	Outside of Scope
Inflation	Cost of the practice increases due to inflation in cost of materials or labor.	Yes	
Increase in quantity	Quantity of a practice increases over the original estimated amount, which may include increased acreage of easement purchase due to final boundary survey.	Yes	
Reapplication	Practice is certified for payment but is not considered fully established and has failed due to no fault of the landowner. This will generally only apply to vegetative practices that require a period of time before determining that the practice is fully established. Additionally, the contract schedule may include subsequent years of treatment for establishment. Failure of a practice because of circumstances within the control of a participant, such as lack of required maintenance, constitutes a violation of the terms and conditions of the contract.	Yes	
Repair	A practice is completed, is considered fully established, and certified for payment. The practice is damaged or destroyed later through no fault of the landowner. For example, a dike is installed, certified, and paid for, and 2 weeks later it is washed out by unanticipated flooding.		Yes
Maintenance	The practice has been installed and certified as complete. Over time, rodent damage occurs and needs to be corrected to protect the integrity of the structure. This does **not** include damage done through landowner violation, such as tree planting destroyed by unauthorized grazing.		Yes
Management	Practices not originally scheduled but later determined necessary to manage the vegetation and hydrology of the site, such as brush management.		Yes
Substitution	Practice planned in the existing contract will be replaced with a practice that serves the same purpose but does it more efficiently, more economically, etc. It could also be that the original, planned practice was found on final design to be infeasible and that the current practice will serve the same purpose and is feasible.	Yes	
New Practice	This includes practices for enhancement of the original restoration or because original restoration did not meet expectations. It includes practices inadvertently omitted from the existing contract that are not necessary for proper functioning of practices in the existing contract.		Yes
Facilitating Practice	Practice was omitted from existing contract but is necessary for the proper functioning of one or more practices in the existing contract.	Yes	

528.145 Contract Status Review

A. Easement restoration agreements that have open obligations must be reviewed annually until all scheduled practices have been implemented. The timing, method, content, and

documentation of the review is based on the specific easement restoration agreement mechanism: Federal contract, agreement, or landowner CPC.

B. For landowner CPC's, annual contract reviews are conducted onsite to assess current conditions and progress in implementing the easement restoration agreement. Contract reviews should be done late enough in the calendar year to allow for the observation of performance of scheduled practices and should include the landowners to the extent possible.

C. During restoration implementation, the ACEP-WRE area may be visited one or more times during a year; however, the annual contract review is the occasion for careful evaluation and recording of the participant's needs and the status of the contract and operations that must occur once a fiscal year. For landowner CPCs, findings are to be recorded on Form NRCS-CPA-13, "Contract Review" or successor form. This contract review is independent of the required annual monitoring of easements and 30-year contracts, although the activities could be performed concurrently. (See 440-CPM-527, Subpart P).

D. At a minimum, the following are to be checked or reviewed, as appropriate:

(1) Maintenance of practices previously applied
(2) Application of practices scheduled in the current year
(3) Items in noncompliance
(4) Need for changes in time schedule or practices
(5) Adequacy of applied conservation practices in relation to the programs objectives and the WRPO and associated plans
(6) Determination of whether land under contract is still under the landowner's control
(7) Items needing attention next year
(8) Agreement items not carried out as scheduled will be noted on the Form NRCS-CPA-13 along with the reason, if delayed
(9) No-cost agreement items, for which NRCS provides no financial assistance funds
(10) Contract disbursements and remaining estimated obligations

E. The contract review form must be signed by the designated conservationist who conducted the review. When the review is made with the landowner, he or she should sign or initial to indicate concurrence. A copy of the contract review form is to be sent to the State office and retained in the official casefile. A copy should be provided to the landowner.

F. See 440-CPM-527-P, for information on annual monitoring requirements.

528.146 Cancellation and Termination of Conservation Program Contracts

A. General

A CPC may be cancelled by both parties or terminated for cause by NRCS. In either event, the obligations contained in the CPC are ended through action that annuls the responsibilities of both parties to the contract. There is a slight, but significant difference in the terminology used when CPC obligations are ended.

(i) Cancellation.—A cancellation is an equitable remedy that allows both parties to the contract to mutually end the contractual relationship (a cancellation may also be referred to as a "termination for convenience"). A recovery of financial assistance payments may or may not be appropriate, as determined by the State conservationist, depending upon the circumstances included in the program participant's written request for cancellation. The participant is not afforded appeal rights, since cancellations are mutually agreed upon by the participant and NRCS.

(ii) Termination.—A contract is subject to termination as a result of a material breach of the terms and conditions included in the CPC (may also be referred to as terminations for cause). As such, a contract termination meets the definition for an adverse decision in accordance with 7 CFR Section 11.1, "National Appeals Division Rules of Procedure." The cause for termination and the procedure used by NRCS to ensure that the landowner has been provided an opportunity to remedy the violation of the contract as required by the specific program regulation must be fully documented. Terminations for cause usually result in an assessment of damages for recovery of costs associated with the administration of the breached contract.

B. Cancellation of CPC

(1) Cancellation of CPCs for easement restoration agreements must follow guidance given in this section and in 440-CPM, Part 530. Landowners with an active CPC may request that a CPC be cancelled. Landowners must request cancellation in writing, provide reasons for the cancellation, and, if applicable, provide information on availability of any transferees.

(2) If a CPC is cancelled, the landowner forfeits all rights to any payments under the contract and may be required to refund payments as described in the CPC appendix. When a contract is cancelled, the State conservationist must—

(i) Document the effective date of cancellation on the CPC documents.

(ii) Fully document the reasons for the CPC cancellation.

(iii) Inform the landowner, in writing, of the approval of the cancellation request, including the forfeiture of all future payments under the CPC and repayment requirements to complete the process. (See subpart U of this part for a sample cancellation letter.)

(iv) Request deobligation of remaining funds after all certified practices have been paid and any advances liquidated or otherwise processed.

C. Termination of CPC

(1) Termination of CPCs must follow guidance given in 440-CPM-530. Documentation of termination should include Form NRCS-CPA-13, "Contract Reviews," and Form NRCS-CPA-153, "Agreement Covering Non-Compliance with Provision of Contract," if a breach of contract is involved; the latter should be signed by the landowner. (See subpart U of this part for a sample termination letter.)

(2) If NRCS terminates a CPC, the landowner forfeits all rights to future payments under the CPC and may be required to refund all or part of the payments received, plus interest. In addition, NRCS is entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or legal action related to the termination.

(3) A CPC termination is effective immediately upon a determination by the State conservationist that the landowner has—

(i) Submitted false information.

(ii) Filed a false claim.

(iii) Engaged in any act for which a finding of ineligibility for payments is permitted under this part.

(iv) Taken actions (or inactions) that NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

528.147 Thirty-Year Contract Modification, Cancellation, and Termination Policy

A. Cancellation (Termination) of the 30-Year Contract

In accordance with the terms of the 30-year contract, if NRCS determines that a landowner is in violation of the terms of the 30-year contract or the terms of any documents incorporated by reference into the contract, the landowner must be given reasonable notice and an opportunity to voluntarily correct the violation within 30 calendar days of the date of notice or such additional time as the State conservationist determines is necessary to correct the violation. If there is a continued failure of the landowner to comply with any provision of the contract, NRCS or other delegated authority has any legal or equitable remedy provided by law and right to—

(i) Enter upon the property to perform necessary work for the prevention of or remediation of damage to wetland or other natural values.
(ii) Assess all expenses incurred by NRCS (including any legal fees or attorney fees) against the landowner, to be owed immediately to the United States.
(iii) Terminate the contract and require repayment by the landowner of costs incurred by NRCS in furtherance of the contract.

B. Modification of the 30-Year Contract or WRPO

For lands held by the Bureau of Indian Affairs (BIA), modification of the 30-year contract or WRPO requires an amendment to the 30-year contract and the approval of the landowner, NRCS, and the designated BIA official. For boundary modifications to 30-year contracts, considerations are similar to criteria for easement administration actions affecting the easement boundary or terms (see Subpart R, "ACEP Easement Subordination, Modification, Exchange, and Termination" of this part). Coordinate with EPD on information and steps required to modify or amend an existing 30-year contract.

528.148 Converting an Existing 30-Year Easement to a Permanent Easement

A. To request an increase in duration of an existing closed easement from 30-years to permanent, the landowner must sign a new application, Form NRCS-CPA-1200, "Conservation Program Application" or successor form, and indicate on it the desire to increase the duration of an existing 30-year easement to a permanent easement. States must have a final title opinion from OGC for the original 30-year easement prior to processing an application to increase the duration of an existing easement from 30-year to permanent.

B. The landowner may request to extend the easement duration on the entire 30-year easement area or something less than the entire easement area. No new acres may be added to the existing easement area. Conversions of less than the entire easement area have additional requirements, as described throughout this section.

(1) If the request is to convert the entire 30-year easement area, a new application record is not entered in the easement business tool (e.g., NEST), but instead the request must be noted in the existing 30-year easement record and a copy of the application containing the request to extend the easement duration uploaded to the 30-year easement record.
(2) If the request is to convert less than the entire 30-year easement area, a new application record must be created in the easement business tool (e.g., NEST), a copy of the application containing the request to extend the easement duration uploaded to

the new application record, and a memorandum to the file identifying a "conversion" must be started at the time the new application record is created.

C. Applications to increase duration of an existing easement are not required to be ranked; however, the State conservationist must determine the additional protection to be of significant environmental value and that the existing 30-year easement is in compliance based on the most recent monitoring report (green condition) and has no outstanding violation or enforcement issues. Additionally, prior to selection for funding, updated onsite reviews, eligibility determinations, due diligence, and preliminary investigation activities must be conducted for the area proposed for conversion in accordance with subpart K of this part and compensation amount determined as described below.

D. Valuation and Compensation Determination.—At the time of recording the 30-year easement, the easement payment provided to the landowner was not to exceed 75 percent of the easement value for a perpetual easement. For the conversion from a 30-year to a permanent easement, the landowner is compensated for the remainder of the easement value by providing up to 25 percent of the applicable geographic area rate cap (GARC) approved for use in the fiscal year the conversion is selected for funding and applied to the easement area being converted to a permanent easement. The fair market value of the land is determined based on the land use in place at the time the 30-year easement was originally enrolled. If there is a current approved areawide market analysis (AWMA) and associated GARC rates for the original land uses in that geographic area, the landowner would receive 25 percent of the applicable GARC value for the acres being converted. If there is not an approved and applicable AWMA, an individual appraisal is used to determine the fair market value of the land based on the land uses in place at the time the 30-year easement was originally enrolled and the current approved appraisal GARC rate would then be applied to the appraised fair market value. Contact the national appraiser for specific guidance before procuring an individual appraisal. The method used to determine the fair market value, either an AWMA or individual appraisal, is not limited by the method originally used to determine the easement value for the 30-year easement.

(1) Example With a Current AWMA.—Irrigated cropland in Smith County was enrolled in a 30-year easement in fiscal year (FY) 2006. The landowner was paid 75 percent of the appraised $1,400 per-acre value, or $1,050 per acre. In FY 2020, the landowner requests conversion to a permanent easement. In FY 2020 there is an approved AWMA, with a GARC rate of $2,000 per acre for irrigated cropland (original land use) in Smith County where the land is located. The payment to the landowner to convert from a 30-year to a permanent easement will be 25 percent of the current applicable FY 2020 GARC rate of $2,000 per acre for irrigated cropland in Smith County, which is $500 per acre.

(2) Example Using an Individual Appraisal.—Irrigated pasture in Jones County was enrolled in a 30-year easement in FY 2012. In FY 2012, there was an approved AWMA and an associated GARC for irrigated pasture in Jones County. The landowner was paid 75 percent of the FY 2012 irrigated pasture GARC rate of $1,200 per acre, which was $900 per acre. In FY 2019, the landowner requests conversion to a permanent easement. The State is not using an AWMA in FY 2019, therefore, an individual USPAP appraisal is ordered and the appraiser is instructed to base the fair market value determination on the irrigated pastureland use that was in place at the time the 30-year easement was originally enrolled. The appraised fair market value of the land as irrigated pasture is $1,700 per acre and the approved FY 2019 appraisal-GARC for the State is 80 percent, which is $1,360 per acre. The

payment to the landowner to convert from a 30-year to a permanent easement will be 25 percent of the calculated GARC value of $1,360 per acre, which is $340 per acre.

E. All conversions from a 30-year easement to permanent easement must undergo a national-level internal controls preobligation review prior to executing the "Agreement to Extend the Easement Duration." Funds may be obligated only after all required reviews are completed and the State conservationist signs the "Agreement to Extend the Easement Duration." (See subpart U of this part for a copy of this document.)

F. If the landowner proposes to convert less than the entire existing 30-year easement area and NRCS determines the reduced area meets the required eligibility criteria, NRCS must also obtain a new easement boundary survey to describe the permanent easement area, including ensuring there is sufficient access to the permanent easement area.

G. The standard ACEP-WRE easement acquisition activities and requirements in subparts K and M of this part must be followed including, but not limited to, onsite visits, updated title search and review, sufficient access, boundary surveys as needed, an updated title opinion from OGC, necessary title clearances, and use of a closing agent to ensure the deed is closed and recorded in accordance with the OGC title opinion and NRCS closing instructions, including any additional instructions specific to the closing and recordation of a conversion of an existing 30-year easement to a permanent easement. Internal control reviews must be completed prior to payment in accordance with current internal controls policy applicable to conversions to increase easement duration.

H. The perpetual easement will be recorded using the most current version of Form NRCS-LTP-30, "Warranty Easement Deed in Perpetuity" and unless directed otherwise by OGC, must include a clause on the "Warranty Easement Deed" approved by OGC and EPD, that addresses the following items:

(1) For a conversion of the entire easement area from a 30-year to a perpetual easement, a clause approved by OGC must be included to effect the change of the original 30-year easement deed to a perpetual easement, identify the current landowners of record, and state the consideration for the conversion.
(2) For a conversion of less than the entire easement area from a 30-year to a perpetual easement, for the portion that will become a permanent easement, the most current version of the "Warranty Easement Deed" must be executed and recorded and include a clause approved by OGC to effect the change of the original 30-year easement deed for the portion of the easement that will be permanent, identify the current landowners of record and state the consideration for the conversion. An easement boundary description and survey for the portion that will be converted to a permanent easement must be attached as an exhibit to the new "Warranty Easement Deed." The OGC-approved clause on the new deed must also identify that the area outside of the exhibit identifying the boundary of the perpetual easement remains subject to the original "Warranty Easement Deed."

I. States will be provided the appropriate clause by EPD upon approval of the required national internal controls (IC) preobligation review of the conversion. The clause must be added to the draft "Warranty Easement Deed" that is sent to OGC when requesting the preliminary title opinion for the conversion. If OGC requires a clause different than the clause provided by EPD (or requires removal of the clause provided by EPD), States must follow the direction provided by OGC.

J. Following closing and recording of the new "Warranty Easement Deed" for the perpetual easement, States must complete the postclosing activities as described in subpart M, section

528.125G of this part, including the request and receipt of a final title opinion from OGC and complete the following steps in the easement business tool (e.g., NEST):

(1) For conversion of the entire 30-year easement area, States must upload a copy of the fully executed and recorded "Warranty Easement Deed" in the existing record for the 30-year easement and submit a memo to the file for "conversion."

(2) For a conversion of less than the entire 30-year easement area, States must upload a copy of the fully executed and recorded warrant easement deed, including a copy of the legal boundary description for the permanent easement area, to the new agreement record created from the application record for the conversion. Identify in the memo to the file for conversion the original agreement number for the original 30-year easement and the new agreement number associated with the portion that has been converted to a perpetual easement.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart P – ACEP-WRE Maintenance, Management, Monitoring, and Enforcement

528.150 Overview

A. This subpart provides guidance related to the maintenance, management, monitoring, and enforcement of lands enrolled in the ACEP Wetland Reserve Easements (ACEP-WRE) (see subpart U of this part for the ACEP-WRE business process).

B. "Maintenance" is defined as work performed to keep the enrolled land functioning for program purposes for the duration of the enrollment period. Maintenance includes actions and work performed to—

(1) Keep the applied conservation practice functioning for the intended purpose during its life span.
(2) Prevent deterioration of the practice.
(3) Repair damage.
(4) Replace conservation practices or eligible activities to their original condition if one or more components fail or as otherwise determined necessary by NRCS.

C. "Management" includes those eligible activities or measures necessary to properly manage wetland functions and values (especially wildlife habitat) for which the land was enrolled in ACEP-WRE, for the duration of the enrollment. Management needs and requirements may change over time depending on the wetland functions and values and habitats on the enrolled area.

D. "Monitoring" includes the periodic review and assessment of how land enrolled in ACEP-WRE is meeting program purposes and objectives, including an assessment of the ecological functioning of the site and the landowner's program compliance. Guidance regarding monitoring procedures and requirements applicable to ACEP-WRE is in 440-Conservation Programs Manual (CPM), Part 527, Subpart P, and further specified in this part.

E. "Enforcement" includes actions needed to ensure landowners and third parties are not violating, encroaching, or trespassing upon NRCS contractual or easement rights. Guidance regarding enforcement and violations procedures and requirements applicable to ACEP-WRE is in 440-CPM, Part 527, Subpart S, and further specified in this part.

F. For all enrollment types, NRCS will identify all required management and maintenance of conservation practices, components, activities, and measures in the wetland reserve plan of operations (WRPO). These activities must be captured in the WRPO through the narrative portion of the WRPO itself or in associated site-specific management plans, operations and maintenance (O&M) plans, practice specification sheets, or compatible use authorizations (CUAs).

G. For all easement enrollments and for 30-year contracts on non-Tribal trust, allotted, and individual Indian lands, the landowner is required to obtain a CUA (see section 528.152 below) before implementing management or maintenance actions identified in the final WRPO or actions requested by the landowner that are prohibited under the terms of the ACEP-WRE easement or 30-year contract.

(1) NRCS is responsible for maintenance and management activities on easement enrollments but may authorize the landowner or someone other than the landowner to

perform maintenance and management activities through a CUA issued to the landowner.

(2) If NRCS determines that payment for certain management or maintenance activities are appropriate and necessary, NRCS may enter into a conservation program contract (CPC) with the landowner, or a contribution agreement, a cooperative agreement, an interagency agreement, or a Federal contract with a qualified partner or third-party vendor. Qualified partners or third-party vendors may include other Federal agencies, State agencies, conservation districts, technical service providers, or other third parties NRCS has determined have the expertise and capacity to implement the required items.

Note: Except for establishment costs incurred by the United States and replacement costs not due to the landowner's negligence or malfeasance, all other costs involved in maintenance of fences and similar facilities to exclude livestock are the responsibility of the landowner.

H. On land enrolled through a 30-year contract, the landowner is responsible for maintenance and management activities. The final WRPO is part of the 30-year contract and must describe the management and maintenance activities that the landowner is responsible to implement.

(1) Contracts for 30-year land use on non-Tribal trust, allotted, and individual Indian lands require a CUA to perform activities and measures described in the WRPO.

(2) Contracts for 30-year land use on Tribal trust lands do not require separate CUAs to perform activities; however, the principles of compatible and noncompatible uses described in sections 528.152 and 528.153 below must be taken into consideration when developing the final WRPO, including management and maintenance activities.

(3) States may elect to use CUAs for 30-year contracts on Tribal trust lands to supplement WRPO documentation and authorize various management and maintenance activities. These CUA requests must be signed by the landowner and Bureau of Indian Affairs (BIA) and authorized by NRCS prior to implementation.

I. NRCS must conduct annual monitoring of easements and 30-year contracts as described in section 528.156 below and in 440-CPM-527, Subpart P, to determine if ACEP-WRE purposes and objectives are being met.

J. Delegated Management, Monitoring, and Enforcement Authority

(1) Under ACEP-WRE, NRCS may, at any time, delegate its easement monitoring or management responsibilities to a conservation organization that has appropriate authority, expertise, and technical and financial resources, as determined by NRCS, to carry out such delegated responsibilities. NRCS may also, at any time, delegate its easement management, monitoring, or enforcement responsibilities under ACEP-WRE to other Federal or State agencies that it determines to have the appropriate authority, expertise, and technical and financial resources to carry out delegated responsibilities. State or Federal agencies may use their general statutory authorities in administering delegated management, monitoring, or enforcement responsibilities for ACEP-WRE easements.

(2) These delegations are accomplished through the use of a memorandum of understanding or other appropriate written agreement that details the responsibilities of all parties, includes a termination clause, and, with the following exception, may be recorded with the easement. For any conservation organization or Federal or State agency that is the fee title owner of the land subject to the easement, the responsibilities that can be delegated are limited to management or monitoring.

Furthermore, these responsibilities will not be delegated to such a fee title owner in a recorded document, but rather through a nonpermanent agreement that is subject to periodic review, renewal, or amendment as needed and includes a termination clause.

(3) The authority to subordinate, modify, exchange, or terminate the easement is reserved for the Chief and may not be vested in a delegated agency or organization. See subpart R of this part for the policy and procedure related to easement administration actions, which include subordination, modification, exchange, and termination of the easement.

528.151 Management

A. General

The State conservationist, in consultation with the State technical committee (STC), will ensure that easements and 30-year contracts are being properly monitored and managed, deficiencies are identified and corrected, and additional work is completed in a timely manner. This includes documenting, certifying, and spot checking to ensure that all phases of enrolled ACEP-WRE projects are being managed to maximize wetland functions and values and accomplish the goals and objectives of the warranty easement deed or 30-year contract and the final WRPO. Easements and 30-year contracts will be monitored at least annually as specified in 440-CPM-527-P, for ecological and compliance purposes.

B. Management Plans

(1) State conservationists must ensure that site-specific management plans are included in the final WRPO. These plans are subject to change over time and prescribe how lands will be managed and how restoration practices, components, measures, and activities will be implemented to maximize wetland functions and values, such as wildlife habitat benefits and water quality. To accomplish this, management plans should address activities including—

(i) Hydrology management objectives and methods, including, as applicable, target water depths, drawdown rates and timing, and flooding schedules.

(ii) Vegetation management objectives and methods, including burn plans, noxious weed control, irrigation schedules, and management practices such as grazing, disking, burning, mowing, haying, or timber management.

(2) The landowner implementation of conservation practices, components, measures, and activities prescribed in the final WRPO requires an approved CUA unless the practices are being implemented as part of an approved CPC (see section 528.152 below). These include, but are not limited to—

(i) Managed timber harvest.

(ii) Hydrology management.

(iii) Pest management.

(iv) Invasive species control.

(v) Periodic haying or grazing.

(3) Conducting any hydrology manipulation, vegetation manipulation, or other management activities outside of the WRPO and any applicable CUAs is a violation of the easement or 30-year contract and is prohibited. For ACEP-WRE, States must follow the procedures in section 528.157 below and in 440-CPM-527-S, to address potential or confirmed violations.

528.152 Compatible Uses

A. General

(1) ACEP-WRE lands may be used for compatible economic uses, if such use is permitted by the warranty easement deed or 30-year contract, or authorized by NRCS, in its sole discretion, under the WRPO and applicable CUAs. Undeveloped hunting and fishing conducted pursuant to applicable Federal, State, and Tribal regulations and in a manner consistent with the terms of the ACEP-WRE is a right reserved to the landowner subject to the terms of the deed or 30-year contract. All rights not specifically reserved to the landowner under the warranty easement deed or 30-year contract require site-specific evaluation and specific authorization from NRCS prior to implementation.

(2) Under the terms of the warranty easement deed or 30-year contract, NRCS may, in its sole discretion, authorize the landowner to conduct compatible uses on the easement or contract area. Such authorizations are time-limited and may be modified or rescinded at any time by NRCS. In evaluating and authorizing compatible uses of the easement or contract area, NRCS will:

(i) Consider whether the use will facilitate the practical administration and management of the land subject to the easement or 30-year contract; and

(ii) Ensure that the use furthers the functions and values for which the easement was enrolled, including long-term protection and enhancement of the wetland and other natural values of the enrolled area.

(3) The State conservationist, with advice from the STC, will establish guidelines for compatible uses that may be authorized in their State. Approved activities must provide for the full array of wetland functions and values, including the wetland and associated habitat types for which the enrollment was established, unless changes in habitat or management objectives are identified by NRCS with input from U.S. Fish and Wildlife Service (FWS). CUAs must not adversely affect habitat for migratory birds, at-risk species, and threatened or endangered species.

(4) On easements and 30-year contracts on non-Tribal trust, allotted, and individual Indian lands, CUAs are required any time a landowner is affecting the hydrology or vegetation of the enrollment area, even when the landowner is carrying out management activities determined necessary by NRCS and outlined in the WRPO. If the landowner is implementing conservation practices or activities identified and being funded through a CPC, a separate CUA for those practices is not required. If a landowner activity will occur outside the enrolled area but will affect the hydrology or vegetation within the easement area or 30-year contract area, a CUA is also required; however, NRCS cannot provide ACEP funds for such activities.

(5) Since wetland and biological systems are dynamic and resource conditions change over time, NRCS will not determine that any use is permanently compatible with the project. A landowner will not be assured of any specific level or frequency of such use that extends for the duration of the enrollment period. All CUAs must identify the length of time for which the authorization is valid and an expiration date. No CUA may be granted for more than a 10-year length of time.

(6) To the extent possible, NRCS will address CUAs in a comprehensive manner to minimize administrative burden to NRCS and the landowner. Therefore, one CUA may identify several activities and associated terms and conditions for each authorized activity. Similarly, a CUA may simply reference and provide supplemental detail to an adequately detailed site-specific management plan, which may be incorporated into the CUA by reference. The comprehensive treatment of

these activities through multi-use CUAs does not limit the ability of NRCS to subsequently modify or cancel a particular prescribed activity.

(7) The CUA process may be initiated by a landowner request or from NRCS-initiated discussions and subsequent agreement with the landowner. CUAs are subject to routine revisions and are not recorded with the warranty easement deed. All CUAs will stipulate that NRCS retains the right to modify or cancel the authorization at any time NRCS determines the use does not further the protection and enhancement objectives of the enrollment or the landowner has failed to comply with the CUAs terms and conditions. CUAs do not vest any right of any kind with the landowner. If a CUA is authorized, the landowner is not under any obligation to implement the activities; however, if the landowner chooses to implement the activities, they must be conducted in accordance with the terms of the CUA.

(8) Approved CUAs must be documented in the easement business tools (e.g., National Easement Staging Tool (NEST)). States must conduct additional onsite monitoring on enrollments with active CUAs in accordance with 440-CPM-527-P.

B. Prescribing Compatible Uses

(1) All CUAs must be in writing and supported by a technical determination in the case file that clearly documents the basis for the determination that the authorized activities meet compatibility requirements and the guidelines for implementation.

(i) NRCS will provide the FWS, conservation district, and State wildlife agency the opportunity to provide input, but the details of CUAs are determined by NRCS at its sole discretion.

(ii) The method by which input from these partners is sought is at the discretion of the State conservationist, and may occur on a project-by-project basis or on a broader basis, such as by geographic area, compatible use activity, wetland type, or habitats with similar functions and characteristics.

(iii) The State-specific wetland restoration criteria and guidelines (WRCG) document should describe technical parameters, in addition to those provided in this part, that States will use as a reference in reviewing, prescribing, and monitoring CUAs activities. These technical parameters should incorporate where appropriate the input provided by the partners.

(iv) Materials provided by these partners on a project-by-project basis should be kept in the individual case file.

(2) Compatible use authorizations are subject to requirements of the National Environmental Policy Act (NEPA). States must analyze and document the proposed compatible use activities including alternatives and the associated effects on a completed Form NRCS-CPA-52, "Environmental Evaluation Worksheet," or successor form. States must also document how the activity furthers the long-term protection and enhancement of the wetland functions and values of the site, including the impact to habitat for migratory birds, at-risk species, and endangered or threatened species. When evaluating the effects an action will have on the enrolled area, a determination of "no adverse impact" is insufficient justification for authorizing an activity.

(i) A Form NRCS-CPA-52 is required for each CUA; however, if a new CUA is comprised of activities that have been previously analyzed in an existing Form NRCS-CPA-52 for that individual easement or 30-year contract area, a separate Form NRCS-CPA-52 is not required if all of the following conditions are met:

- The activity as prescribed in the new CUA was analyzed and documented in an existing Form NRCS-CPA-52 completed for the final WRPO,

management plan, or previously authorized CUA for that individual enrollment;

- The existing Form NRCS-CPA-52 analyzes the actions specifically described in the new CUA to which it is being applied. If there are changes or differences in the alternatives described in the benchmark conditions on the site or in the effects of the actions, a new Form NRCS-CPA-52 is required for that CUA; and
- The existing Form NRCS-CPA-52 was originally signed by the NRCS responsible Federal official (RFO) no more than 5 years prior to the date any subsequent CUA relying on such Form NRCS-CPA-52 is authorized by NRCS.

(ii) States must document their determination and findings on the Form NRCS-CPA-52 that is associated with each individual CUA, including input received from regulatory agencies consulted during the NEPA process, and retain a copy of the environmental evaluation and associated materials in the individual easement case file or in the appropriate easement business or planning tool.

(3) A CUA will specifically describe the allowed use in terms of the following:
(i) The person requesting the compatible use
(ii) The activity being authorized and its purpose
(iii) A description of the land to be utilized
(iv) The beginning conditions of the site when the compatible use was authorized
(v) A statement of affect and compatibility
(vi) Method of implementation
(vii) Frequency of the authorized activity
(viii) Timing and intensity of implementation
(ix) Location where the authorized activity may occur
(x) Duration of the authorization
(xi) Statement that NRCS has the right to modify or cancel CUAs at any time to protect the functions and values of the enrollment area (e.g., if necessary to respond to changing vegetative successional patterns, hydrology, rainfall patterns, and the general response of the easement area to the activity)
(xii) Signatures of the landowner and NRCS representative issuing the authorization

(4) The CUA must clearly reserve to the United States the right to modify or cancel the CUA therefore the following statement must be incorporated in every CUA:

"NRCS retains the right to modify or cancel this compatible use authorization at any time if the NRCS determines that such activities do not further the protection and enhancement objectives of the easement (or 30-year contract area), or that the landowner has failed to comply with specified terms and conditions. The landowner engages in such activities at his or her own risk. This authorization does not vest any right of any kind in the landowner. This authorization is null and void after the expiration date specified above. By signing this document, the landowner agrees to the terms described above and on referenced documents." (See subpart U of this part for Form AD-1160, "Compatible Use Authorization.")

(5) Economic returns that are realized by the landowner as a result of a CUA being implemented are acceptable.

(6) The State conservationist makes the final determination of compatibility and is the NRCS RFO accountable for all such determinations. The State conservationist may delegate this authority to the assistant State conservationist or area conservationist, but this authority may not be delegated any further. NRCS personnel at the State or field level may develop the terms and conditions that are considered for final

incorporation into a particular CUA. Only a CUA executed by the State conservationist or the appropriate assistant State conservationist or area conservationist will be recognized as an action of the agency.

(7) All current and active CUA information must be entered into the current easement business or planning tool (e.g., NEST). A copy of the executed CUA document must be uploaded into the easement business tool (e.g., NEST) prior to the end of the fiscal year in which the CUA is signed by NRCS.

(8) NRCS will not record or in any manner participate in the potential recording by others, of CUAs in the land records.

C. Acceptable Compatible Uses

(1) The types of practices, components, activities, or measures that are allowed through the compatible use process may include—

(i) Installation and maintenance of acceptable structures (see section 528.152D below).

(ii) Haying or mowing under certain conditions (see section 528.152E below).

(iii) Grazing to establish or maintain wildlife habitat or wetland functions and values (see section 528.152F below).

(iv) Forest management activities including timber harvest, for the specific purpose of restoring, protecting and enhancing optimum wildlife habitat and wetland functions and values, especially for migratory birds and at-risk species. (See section 528.152G below.)

(v) Maintenance of private drainage systems, but only if the activity does not adversely affect the functions and values of the wetland.

(vi) Wildlife food plots under certain conditions (see section 528.152H below).

(vii) Managing water levels. NRCS will provide management guidelines to persons receiving the CUA to manage water levels. Manipulating water levels outside of the compatible use process is prohibited.

(viii) Applying pest management activities.

(ix) Managing for carbon sequestration.

(x) Other conservation practices, components, activities, or measures needed to protect or enhance wildlife habitat and other functions and values of the wetland as approved by the State conservationist with advice from the STC or with input from the Easement Programs Division.

(2) States are encouraged to include in their State-specific WRCG document as described in subpart N, section 528.131B of this part, the technical considerations and parameters developed in coordination with the STC related to the authorization of compatible uses on ACEP-WRE easements and 30-year contracts in the State. These considerations should include common management methods and techniques used to maximize functions and values on wetland and associated habitat types found on ACEP-WRE enrollments in the State, the conditions under which certain uses may or may not be authorized, scenarios under which exceptions may be appropriate and the limits and applicability of such exceptions, and other technical provisions that will facilitate the analysis, decision-making, prescription, documentation, and authorization of compatible uses.

D. Acceptable Structures

(1) The right to undeveloped recreational use of the easement or 30-year contract area is reserved to the landowner subject to the rights conveyed to the United States and subject to the terms specified in the warranty easement deed or 30-year contract. The landowner's exercise of this right as reserved is not subject to the CUA process, but

must be consistent with the long-term protection and enhancement of the wetland and other natural values of the easement or 30-year contract and any other limitations specified in the warranty easement deed or 30-year contract (for example, undeveloped recreational uses may include use of hunting or observation blinds that will accommodate no more than four people and are temporary, nonpermanent, and easily assembled, disassembled, and moved without heavy equipment).

(2) In contrast to nonpermanent hunting or observation blinds that may be placed on the easement or 30-year contract area within the limits of the landowner's reserved right to undeveloped recreational uses, which are not subject to the CUA process, NRCS may authorize through the CUA process individual semipermanent hunting or observation blinds for undeveloped recreational use. The semipermanent hunting or observation blinds are subject to the following requirements:

(i) May have external dimensions of no more than 80 square feet and 8 feet in height.

(ii) The CUA will describe the number, locations, and features of blinds.

(iii) Disturbance to wildlife from location, placement, installation, maintenance, and use, especially during critical periods such as night roosting and nesting season, must be kept to a minimum.

(iv) May require heavy equipment to remove, but must be able to be removed from the enrolled area with minimal ground or vegetation disturbance

(v) The CUA must stipulate that the landowner is responsible for all costs associated with the removal of the blind and the repair of any impacts to the easement or 30-year contract area as a result of the removal.

(vi) The blind is only authorized so long as a valid CUA is in place. If the CUA is not renewed, the blind must be removed from the easement or 30-year contract area by the date of expiration of the CUA.

(vii) Must be consistent with the long-term protection and enhancement of the wetland and other natural values of the easement or 30-year contract area.

(viii) All other applicable limitations must be described in the CUA.

E. Haying or Mowing Requirements

(1) The United States possesses the right to prohibit all haying and mowing unless NRCS determines that such haying or mowing will further the protection and enhancement of the wildlife habitat and wetland functions and values.

(2) Approved haying or mowing will be identified in a CUA and as appropriate, in the WRPO. Any haying or mowing must be scheduled and subject to the following limitations:

(i) Must occur between July 15 and September 1.

(ii) Must ensure there is adequate regrowth of vegetation to provide winter cover and early spring nesting cover.

(iii) Must ensure maintenance of adequate wildlife habitat quality and other wetland functions and values.

(iv) Not allowed in areas where woody vegetation is being established or maintained.

(v) Limited to mowing for access to manage and maintain such structures as levee tops and nature trails, or as prescribed to restore and maintain native plant communities or manage succession for special-status species.

(vi) Grazing is not allowed in the same year on the same acreage that is hayed or mowed.

(3) Exceptions to the timing and frequency of haying or mowing may be considered by the State conservationist. The evaluation must include input from the FWS, State

wildlife agency, and conservation district. These exceptions must comply with statewide program guidelines that may be established by the State conservationist with advice from the STC. It is recommended States identify the conditions under which such exceptions may be authorized in their State-specific WRCG document. The decision must ensure the habitat needs of ground-nesting bird species are fully protected and enhanced.

(4) Except where authorized in writing by the national ACEP-WRE manager in consultation with the NRCS national biologist, grazing is not permitted in the same year and on the same acreage as haying or mowing.

F. Grazing Requirements

(1) Except as prescribed and authorized through a WRPO, applicable CUA, or an Exhibit E to a Form NRCS-LTP-33, "Warranty Easement Deed with a Reservation of Grazing Rights," and associated grazing management plan, all grazing must cease after the easement is recorded or the 30-year contract is executed.

(2) Grazing may only be used as a vegetation management tool when it is appropriate based on the wetland and habitat objectives identified in the WRPO and is prescribed and conducted in a manner that has the primary purpose of supporting or improving the identified wetland functions and values on the easement or 30-year contract area. Additionally, grazing may only be permitted when—

(i) Restoration of woody vegetation is not a component of the restoration plan, unless use can be prescribed so the timing and intensity will improve the overall habitat in the woody vegetation area and will not negatively impact establishment and survival of woody vegetation.

(ii) Site-specific grazing guidelines are developed to manage the vegetation to ensure the long-term functioning of the enrolled area or to restore and maintain the native plant communities on the enrolled area.

(iii) It contributes to establishment, maintenance, or improvement of wildlife habitat quality or other identified wetland functions and values.

(iv) It is timed to ensure adequate regrowth of vegetation for winter and spring habitats, as appropriate.

(v) There are no adverse effects on ground-nesting birds and other wildlife.

(3) NRCS may vary the intensity and timing of (or terminate, if necessary) approved grazing authorizations to ensure that optimum functions and values are achieved on the enrolled area. As wetland hydrology and adjacent lands are restored and protected, the vegetation will change in composition and quality, which may necessitate modifying the grazing management plan and associated CUAs from year to year. See subpart Q of this part for details on the reservation of grazing rights enrollment option.

(4) The local NRCS representative, with input from the landowner, FWS, conservation district, and State wildlife agency, will develop grazing guidelines for the individual site. The site-specific grazing guidelines must comply with any statewide program guidelines established by the State conservationist, in consultation with the STC. It is recommended these statewide grazing guidelines be documented in the State-specific WRCG document.

(5) Except where authorized in writing by the national ACEP-WRE manager, in consultation with the NRCS national biologist, grazing is not permitted in the same year and on the same acreage as haying and mowing.

G. Forest Management

(1) The United States possesses the right to prohibit all forest management activities on the easement or 30-year contract area, unless NRCS determines that forest management activities will further the wildlife habitat and wetland functions and values of the easement or 30-year contract. Before forest management activities, including timber harvest, may be authorized on an ACEP-WRE through a CUA, a forest management plan must be developed and appended to the WRPO.

(2) The primary goal of the forest management plan component of the WRPO is to restore, protect, and enhance wildlife habitat and wetland functions and values within the forested portions of the easement. A forest management plan must be developed by an NRCS forester, or the landowner may obtain a forest management plan at their own expense from a professional, certified forester, and provide it to NRCS for review and approval. The completion of an NRCS-approved forest management plan alone does not guarantee that forest management activities will be authorized on the easement area. Forest management activities described in the forest management plan that are approved by NRCS for implementation must be identified in a CUA and are subject to the following limitations:

(i) Forest management activities must be implemented in a manner and during timeframes that will minimize impacts to forest-nesting birds.

(ii) Maximization of timber harvest for economic gain is not a consideration in developing the forest management plan or authorizing a CUA; however, any proceeds derived from the sale of timber harvested in compliance with the forest management CUA, may be kept by the easement owner.

(iii) NRCS must inspect any timber harvest operation during implementation to ensure the CUA is being implemented as written.

(iv) Other State-specific parameters are addressed.

(3) NRCS will not authorize forest management activities that may negatively impact at-risk or listed species or fragile or rare habitats found on the easement.

(4) It is recommended States identify any additional parameters related to the authorization of forest management activities in their State-specific WRCG document.

(5) Except where authorized by the national ACEP-WRE manager in consultation with the NRCS national biologist, clearcutting of forested habitat is not permitted. Clearcutting may only be considered in unique situations where NRCS wildlife and forestry professionals agree that forest conditions or special wildlife habitat needs require such a measure.

H. Wildlife Food Plot Requirements

(1) State conservationists may issue CUAs for wildlife food plots. CUAs authorized for wildlife food plots should include a statement that landowners are responsible for being aware of and in compliance with all applicable State and Federal wildlife baiting laws applicable to local and migratory wildlife species.

(2) Food plots may be authorized subject to the following conditions:

(i) The food plot is determined necessary by NRCS to complete the planned functions and values of the enrolled area.

(ii) Wildlife food plots cannot be harvested as a commodity crop.

(iii) Location, configuration, spatial arrangement, and other details are prescribed by NRCS for the specific site.

(iv) Food plots must be limited to not more than 5 percent of the total acreage of the enrolled area.

(v) Food plots will be located or configured to avoid or minimize habitat fragmentation.

(vi) Other State-specific considerations and parameters are addressed.

(3) State conservationists are encouraged to be flexible in allowing the use of food plots and to coordinate use restrictions with neighboring States. State conservationists should work with FWS, State wildlife agencies, wildlife organizations, and other members of the STC to tailor the use of food plots to align with Federal and State law. It is recommended States identify any additional parameters related to the authorization of wildlife food plots in their State-specific WRCG document.

I. Commercial Shooting Preserves

(1) Commercial shooting preserves may be operated on an ACEP-WRE easement or 30-year contract if all of the following apply:

(i) The commercial shooting preserve is licensed by a State agency, such as the State fish and wildlife agency or State department of natural resources.

(ii) The commercial shooting preserve is operated in a manner consistent with the applicable State agency rules governing commercial shooting preserves.

(iii) The management and maintenance of the cover, vegetation, and hydrology on the easement or 30-year contract area, as determined by the State conservationist in consultation with the STC, must—

- Be conducted in accordance with the final WRPO and all applicable CUAs.
- Provide benefit and enhancement to all native wildlife typical to the area.
- Be conducted outside the primary nesting or brood-rearing season.
- Not adversely impact the cover, vegetation, or hydrology on the enrolled area.
- Further the wildlife habitat benefits, water quality benefits, or other wetland functions and values identified in the WRPO.
- Ensure other State-specific considerations and parameters are addressed as identified in the State-specific WRCG.

(iv) No barrier fencing or boundary limitations exist that prevent wildlife access to or from the easement or 30-year contract area.

(2) The construction of camping facilities, wildlife pens, parking lots, or other related structures or infrastructure is not allowed on the land enrolled in ACEP-WRE.

528.153 Prohibited and Noncompatible Uses

A. In General

Prohibited and noncompatible uses include those activities that NRCS determines will not further the protection and enhancement of the functions and values of the enrolled area. When determining if a use would be noncompatible, evaluate the impact on the present functions and values, and any potential impact, constraint, or limitation that the use would have on subsequent efforts to achieve maximum wildlife benefits and wetland value and functions. Such activities are not limited to, but may include—

(i) Infrastructure projects (see section 528.153B below).

(ii) Placing prohibited structures on the enrollment area (see section 528.153C below).

(iii) Planting and harvesting crops for human or domestic animal consumption (see section 528.153D below).

(iv) Grazing, unless authorized in an Exhibit E to a grazing reserved right enrollment or authorized as a compatible use (see section 528.152F above).

(v) Surface mining, including mining for peat and other organic materials.

(vi) Water supply, waste treatment, and incompatible water conveyance systems (e.g., irrigation withdrawal or return flow of contaminated water).
(vii) Crayfish, catfish, and baitfish production where the intensity of management would undermine the functions and values of the wetland.
(viii) Hunting and fishing where the intensity would undermine the functions and values of the wetland.
(ix) Commercial seed production or harvest.
(x) Biomass production.
(xi) Commercial wild rice or cranberry production.
(xii) Development of road or other transportation systems that fragment the easement area, alter surface hydrology patterns, modify topography, or otherwise diminish the wetland functions and values or constrain restoration or enhancement efforts.
(xiii) Drainage development or maintenance that would adversely affect wetland functions and values on the site.
(xiv) Any activity performed outside the parameters of an authorized, valid CUA including manipulation of water levels.
(xv) Any activities to be carried out on the land owned or operated by the fee title landowner of the enrolled area that is immediately adjacent to and functionally related to the land subject to the ACEP-WRE enrollment if such activities alter, degrade, or otherwise diminish wildlife habitat benefits or wetland functions and values of the enrolled land.
(xvi) The installation or use of fences that have the effect of preventing wildlife use and access onto or off of the enrolled area are prohibited on the enrolled area, the boundary of the enrolled area, or on the landowner's land that is immediately adjacent to, and functionally related to, the enrolled area.

B. Infrastructure Projects

Infrastructure projects must be handled through the easement administration action process identified in subpart R of this part. NRCS will not authorize infrastructure projects through the CUA process.

C. Prohibited Structures

(1) The construction or placing of any structures or buildings, temporary or permanent, is prohibited, except for those temporary or semi-permanent structures for undeveloped recreational uses that meet the "Acceptable Structure" requirements in section 528.152D above, are authorized by NRCS, and are consistent with the terms of the deed or 30-year contract and the WRPO.
(2) Structures that are always prohibited include but are not limited to—
(i) Buildings used for residence, overnight occupancy, commercial uses, or agricultural production, such as—
- Houses.
- Trailers.
- Hunting and fishing lodges.
- Cabins and yurts.
- Fishing huts.
- Barns and outbuildings.
- Storage facilities.
- Workshops.
- Fabrication facilities.

- Sawmills.

(ii) Any other structure that puts a lasting footprint on the easement and does not further the wildlife habitat benefits and wetland values and functions.

(3) Conservation practices, measures, activities, and components that are prescribed by NRCS in the WRPO or through a CUA are not considered prohibited structures. Additionally, hunting and observation blinds for undeveloped recreation consistent with the provisions stated in the terms of the recorded warranty easement deed or executed 30-year contract and described in section 528.152D above may be permissible.

D. Planting and Harvesting Crops

(1) Operation of the land, including planting and harvesting of crops, is under the control of the landowner until the ACEP-WRE easement is recorded or the 30-year contract is executed. Any crops planted before the easement is recorded or 30-year contract is executed may be harvested if authorized in writing by NRCS (see subpart U of this part for a sample preacquisition crop harvest authorization letter).

(2) If authorized through a CUA, landowners may also plant a crop during the spring following the easement recordation or 30-year contract execution when such recordation or contract execution occurs after October 1, provided the crop is planted before July 1. The harvest of the crop will be under the control of the landowner. A subsequent planting of a crop for harvest is prohibited.

(i) Example 1.—ACEP-WRE easement is filed on July 20, 2020. The participant may harvest crops planted before the easement was filed if authorized in writing by NRCS.

(ii) Example 2.—ACEP-WRE easement is filed on October 4, 2020. The participant may harvest crops planted before the easement was filed if authorized in writing by NRCS and plant crops for crop year 2021 if authorized by NRCS in a CUA and planted before July 1, 2021. The participant is prohibited from planting crops beginning July 1, 2021.

(3) The State conservationist will—

(i) Provide each affected landowner with the appropriate written notification of authorization for cropping.

(ii) Provide a copy of the authorization to the Farm Service Agency (FSA).

(iii) Advise the landowner to contact FSA regarding the impact the ACEP-WRE easement or 30-year contract will have on any base acres, allotment history, and payments.

(4) In limited situations, NRCS may authorize through a CUA the temporary permission to crop all or a portion of an easement or 30-year contract subject to the following conditions:

(i) NRCS determines there would be a substantial savings in restoration costs due to reduced site preparation costs and increase site preparation benefits as a result of authorizing cropping on the area to be restored;

(ii) The authorization to crop is limited to one cropping season immediately prior to the date the restoration work is to commence on that area of the easement or 30-year contract;

(iii) The cropping is done in a manner that is acceptable to NRCS as specified in the CUA;

(iv) All reasonable efforts have been made to initiate the restoration in a timely manner;

(v) When the restoration action will be delayed, cessation of cropping is required and may not be reauthorized until the cropping season immediately prior to the date

the restoration work is to commence. The cessation of cropping provides a wide variety of wetland, wildlife, and water quality benefits; therefore, continued cropping until the actual restoration work commences is a violation of program authority. Therefore, landowners must be advised that any cropping authorized under the CUA is exercised at the landowner's own risk.

(5) NRCS must also advise landowners to consult FSA and that they may not be entitled to any USDA benefits related to such cropping.

528.154 Reserved Rights

The landowner reserves certain rights on the sale of an easement or signing of a 30-year contract. These reserved rights are subject to the rights purchased by the United States. The rights reserved to the landowner are as follows:

(1) Title.—Record title, along with the landowner's right to convey, transfer, and otherwise alienate title to these reserved rights.

(2) Quiet Enjoyment.—The right of the landowner to enjoy the rights reserved on the easement area without interference from others.

(3) Control of Access.—The right to prevent trespass and control access by the general public, subject to the operation of State and Federal law.

(4) Recreational Uses.—The right to undeveloped recreational uses, including undeveloped hunting and fishing and leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time. Undeveloped recreational uses may include use of hunting or observation blinds that will accommodate no more than four people and are temporary, nonpermanent, and easily assembled, disassembled, and moved without heavy equipment. Undeveloped recreational uses must be consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area.

(5) Subsurface Resources.—The right to oil, gas, minerals, and geothermal resources underlying the easement area, provided that any drilling or mining activities are to be located outside the boundaries of the easement area, unless activities within the boundaries are specified in accordance with the terms and conditions of exhibit C, which is appended to and made a part of the warranty easement deed or 30-year contract, if applicable.

(6) Water Uses and Water Rights.—The right to water uses and water rights identified as reserved to the landowner are set forth in an exhibit, which is appended to and made a part of the easement deed, or 30-year contract, if applicable.

(7) Traditional Cultural Uses.—For 30-year contract enrollments only, the ability to engage in noncommercial traditional cultural activities is permitted to the extent that such activities do not interfere with the long-term protection and enhancement of the wetland and other natural values on the property.

528.155 Operation and Maintenance (O&M)

A. Landowners agree to the O&M of the easement areas in accordance with the final WRPO, including maintenance of all structural practices in good operating condition for the duration of the easement or at a minimum, for the life expectancy of the practice. NRCS may enter into agreements with the landowner, other Federal agencies, State agencies, conservation districts, or other cooperating partners to assist with O&M activities. When the landowner has agreed to perform these activities, an agreement will be developed in accordance with the CUA process, as appropriate.

B. When a natural disaster, such as an earthquake, devastating fire, or severe flood event occurs, the local NRCS representative must notify the State conservationist and give status reports on the condition of the site.

C. The State conservationist has authority to determine whether implementation of any repair, maintenance, or replacement of any conservation practice, measure, or activity is appropriate, regardless of whether the practice life expectancy has expired or the practice was damaged by a major storm or other natural disaster.

D. The State conservationist has discretion to use funds allocated to the State for such use or may request additional funds from the National Headquarters (NHQ). Upon the request of the State conservationist, the Chief may approve additional funding, based on availability of funds, to replace or repair practices destroyed by unusual circumstances beyond the control of the landowner. Contact the national ACEP-WRE manager when funding is needed to repair or reestablish a damaged site.

528.156 Monitoring

A. Once the easement has closed or 30-year contract has been executed, all ACEP-WRE enrollments will be monitored annually in accordance with 440-CPM-527-P. Prior to the end of each fiscal year, the monitoring information will be entered into the easement business tool (e.g., NEST), and a copy of the completed annual monitoring worksheet will be retained for the duration of the enrollment according to records management requirements in subpart M, section 528.127 of this part, and 440-CPM-527-P.

B. Additionally, while restoration is being implemented under an easement restoration agreement, annual review and monitoring pursuant to the terms of the easement restoration agreement is required to ensure the proper implementation of planned conservation practices, components, measures, and activities and compliance with the terms of the easement restoration agreement (see subpart O, section 528.145 of this part).

528.157 Violations and Enforcement

A. The purpose of monitoring and enforcement activity is to ensure program purposes are achieved on the enrollment area over the life of the enrollment and to prevent violations. The keys to successfully preventing violations are—

(1) Maintaining an ongoing, good relationship with the landowner. There is no substitute for frequent, direct interaction with the landowner to reinforce the provisions of the easement and answer questions that may arise or address issues in a timely manner.
(2) An easement or contract document with clear and enforceable conditions and restrictions.
(3) A comprehensive WRPO including, as appropriate, CUAs, landowner management plans, and O&M plans that have been reviewed with and are understood by the landowner.
(4) A history of regular, systematic, and well-documented monitoring occurrences and as applicable, contract status reviews.
(5) Timely contact with new or prospective landowners regarding ACEP-WRE "Warranty Easement Deed" language, allowances, restrictions, and responsibilities.

B. For ACEP-WRE enrollments, the handling of violations and enforcement of the terms of the deed or 30-year contract will be conducted in accordance with the policy and procedures provided in "Violations and Enforcement" in 440-CPM 527-S.

C. Visits to the easement or 30-year contract area to investigate suspected violations and such observations as wildlife usage, water conditions, land use practices, and other items of interest concerning the easement must be thoroughly documented. The individual making the report should date and sign each entry on each item of documentation. Reports documenting no evidence of violation are just as important as those reports confirming and documenting violations. See 440-CPM-527, Subpart Y, "Exhibits," for the easement violation worksheet for guidance on what information to collect.

528.158 Other Considerations

A. Mitigation

(1) ACEP funds may not be used to acquire easements to establish protections or to implement conservation practices that the landowner is required to establish as a result of a court order or to satisfy any mitigation requirement for which the ACEP landowner is otherwise responsible.

(2) ACEP-WRE easements and contracts provide authority to protect, restore, enhance, and improve enrolled wetlands and associated habitats in a manner that will maximize wildlife habitat and other wetland functions and values. The assumption is that ACEP-WRE lands will receive the conservation attention necessary to achieve this full degree of protection, restoration, enhancement, and improvement. It is not permissible to enter into ACEP-WRE easements or contracts and not implement, to the maximum extent practicable, all needed land treatment conservation actions.

(3) It is not appropriate to allow another entity to expend mitigation funds on any of the land treatment conservation actions that would be practicable to fund under ACEP-WRE. This policy extends to any compensatory action taken by an entity to mitigate adverse ecological impacts, including but not limited to, the Clean Water Act of 1972, the Endangered Species Act of 1973, and the Marine Mammal Protection Act of 1972. Section 1222(f)(2) of the Food Security Act of 1985, as amended, does not allow wetlands restored with Federal funds to be utilized for the Food Security Act wetland mitigation purposes.

(4) There may be limited opportunities when enhancement activities under a mitigation project would go beyond those land treatment conservation actions normally carried out under ACEP-WRE. Landowners who wish to enter into mitigation arrangements should be made aware that if they enter into an agreement with a third party that requires the exercise of rights held by the United States, such actions will be subject to the CUA process and WRPO modification process, both of which are subject to NRCS review, approval, modification or cancellation. NRCS will amend the WRPO and prescribe CUAs at its sole discretion and in accordance with the compatible use process identified in section 528.152 above. (See subpart U of this part for sample limitations to use of ACEP-WRE area for mitigation letter.)

B. Ecosystem Services Credits for Conservation Improvements

(1) USDA recognizes that environmental benefits will be achieved by implementing conservation practices, components, measures, and activities funded through ACEP-WRE, and that environmental credits may be gained as a result of implementing activities compatible with the purposes of an ACEP-WRE easement or contract.

(i) Landowners may obtain environmental credits under other programs if one of the purposes of such program is the facilitation of additional conservation benefits that are consistent with the conservation purposes for which the easement was acquired, and such action does not adversely affect the rights or interests granted under the easement to the United States. NRCS asserts no direct or indirect interest in credits generated by activities not funded through ACEP-WRE.

(ii) Activities required under an environmental credit agreement that affect land cover, vegetation, or hydrology on an ACEP-WRE easement or 30-year contract may require an amendment to the WRPO, to the 30-year contract, or a CUA.

(iii) All agreements and instruments filed on the land for environmental credits are subordinate to the ACEP-WRE and are not binding to the United States.

(iv) Landowners should be cautioned that any applicable credits may be subject to additional requirements and may not be possible on certain ACEP-WRE lands.

(2) Amendments to the WRPO and any applicable CUAs are at the sole discretion of NRCS. The agency will only consider such amendments when the amendment does not infringe on the rights of the United States and when the amendment furthers the wetland and wildlife functions and values being achieved on the easement or 30-year contract area.

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart Q – ACEP-WRE Special Enrollment Options

528.160 Overview

This subpart provides implementation guidance for the Wetland Reserve Enhancement Partnership (WREP) enrollment option and the Reservation of Grazing Rights enrollment option under the Wetland Reserve Easement component of ACEP (ACEP-WRE).

528.161 Wetland Reserve Enhancement Partnership (WREP) Enrollment

A. General

(1) WREP enrollment is a part of the ACEP-WRE and is administered by NRCS, with advice from the State technical committee and other cooperating agencies and organizations, including the U.S. Fish and Wildlife Service (FWS).

(2) Easements and 30-year contracts enrolled through the WREP process have the same requirements as standard ACEP-WRE. Wetland restoration and enhancement actions must maximize wetland functions and values, including wildlife habitat in accordance with the ACEP regulation, 7 CFR Part 1468, and NRCS standards and specifications. Proposals related to easement management must conform to the ACEP-WRE guidelines for managing lands subject to an ACEP-WRE easement. Funds for WREP proposals are derived from funds available for ACEP.

(3) The Chief may enter into agreements with States (including a political subdivision or agency of a State), nongovernmental agencies, or Indian Tribes to carry out WREP partnership agreements.

(4) Partners are required to provide matching funds. In general, contributions provided by the partners may be in-kind services or cash and may be used for technical or financial assistance activities related to the acquisition or restoration of new enrollments or enhancement, management, or monitoring of existing enrollments. The specific requirements for level, type, and use of matching funds is provided in the specific announcement for WREP proposals.

(5) Benefits to the partners in WREP agreements include—

(i) Involvement in wetland protection, restoration, and enhancement in high-priority areas.

(ii) Opportunity to use innovative restoration methods and practices.

(iii) Opportunity to leverage funding to benefit critical resource concerns.

(iv) Opportunity to target outreach and enrollment based on priorities identified by partners and supported by NRCS.

(v) Ability to maximize wetland functions and values, including habitat benefits and water quality on new and existing enrollments.

B. Program Purpose and Objectives

The purpose of WREP enrollment is to target and leverage resources to address high-priority wetland protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, and Indian Tribes (7 CFR Section 1468.35). Under WREP enrollment, State conservationists enter into agreements with eligible partners. Additionally, NRCS

may use WREP enrollment to obtain assistance with easement management activities from those who have the appropriate expertise, as determined by the Chief of NRCS.

C. NRCS Responsibilities.—The responsibilities for WREP are the same as the regular ACEP-WRE with the following exceptions:

(1) National Headquarters (NHQ).—In addition to ACEP-WRE responsibilities, national leadership for WREP enrollment is provided by the Chief and the Chief's designee. The Chief will—

(i) Determine the funding level for WREP proposals on a periodic basis and will notify State conservationists about—

- The level of funding available for WREP proposals in that fiscal year.
- The priorities for funding.
- Required level of partner matching funds.
- Ranking criteria.
- Additional criteria, as determined by the Chief.

(ii) Select proposals for funding.

(iii) Work with State conservationists and partners to develop guidelines and agreements for implementing selected proposals.

(2) State Offices.—In addition to ACEP-WRE responsibilities, State leadership for WREP enrollment is provided by the State conservationist. The State conservationist will—

(i) Upon notice by NHQ, announce availability for submission of WREP project proposals.

(ii) Develop WREP partnership project proposals with eligible partners in their State.

(iii) Coordinate with neighboring States on proposals that include more than one State, including designation of a lead State for the proposal.

(iv) Submit project proposals to NHQ when project proposals are requested.

(3) Once a proposal has been selected by the Chief for funding, the State conservationist will—

- Publish a signup announcement to make information regarding availability of WREP funding to the private and Tribal landowners in the selected proposal areas.
- Work with partners to develop a partnership agreement and ensure that it is consistent with the announcement of funding, the proposal, and ACEP regulations and policy.
- Ensure all program eligibility criteria and policies are met for all applications and enrollments that may result.

(4) Field Offices and ACEP-WRE Teams

Field offices and ACEP-WRE teams will assist partners with implementing the partnership agreement to the extent specified in the agreement.

D. Partner Responsibilities

Partner responsibilities include—

(i) Developing a partnership agreement and ensuring that it is consistent with the announcement of funding, the proposal, and applicable ACEP regulations and policy.

(ii) Performing activities as outlined in the agreement.

(iii) Ensuring availability of resources to be contributed to WREP projects, including all matching funds.

(iv) Providing outreach to potential participants.

528.162 Reservation of Grazing Rights Option

A. General

(1) The reservation of grazing rights is a separate enrollment option available under the ACEP-WRE component. As a component of ACEP-WRE, NRCS implements a reservation of grazing rights enrollment option wherein the landowner may reserve grazing rights on the lands subject to the easement or 30-year contract. This option is only available for unique wetland ecosystems where grazing is the appropriate vegetation management or disturbance activity tool needed to maintain the long-term viability of the unique attributes of that particular wetland ecosystem. Grazing is the only additional right that may be reserved to the landowner and the extent of the reserved grazing right is identified in Form NRCS-LTP-33, "Warranty Easement Deed with Reservation of Grazing Rights," and is further described in the exhibit E to the deed and the grazing management plan that will be a component of the wetland reserve plan of operations (WRPO).

(2) A State conservationist, in consultation with the State technical committee, may consider offering the reservation of grazing rights enrollment option within their State. If enrollment will be offered, the State conservationist must identify the unique wetland ecosystems and designate the geographic area in which those unique wetland ecosystems exist that will be included in the enrollment area. Additionally, the reservation of grazing rights enrollment option may only be offered where the State conservationist determines that the reservation and use of grazing rights—

(i) Are compatible with the land subject to the easement or 30-year contract.

(ii) Are necessary for the restoration and management of the land subject to the easement or 30-year contract.

(iii) Are consistent with the long-term wetland protection and enhancement goals for which the easement or 30-year contract was established.

(iv) Comply with a WRPO grazing management plan developed by NRCS in consultation with FWS at the local level that outlines the location, timing, intensity, frequency, and duration of the grazing.

(v) Supports the habitat needs of the target species, including plant height, structure and spatial considerations for nesting, food, cover, or brood-rearing habitat.

(3) States should document in the State-specific wetland restoration criteria and guidelines (WRCG) any geographic areas designated for potential reservation of grazing rights enrollments, including a description of the attributes of the wetland ecosystems in those geographic areas, the relationship of grazing to the maintenance of the functions and values of such ecosystems, and any other considerations or parameters applicable to enrollments with a reservation of grazing rights.

(4) Lands where woody vegetation was a dominant part of the historic plant community are not eligible for the reserved rights enrollment option unless a waiver is granted by the national ACEP-WRE manager. Examples include woody riparian, bottomland hardwoods, or other forested wetland systems.

(5) Using the template Exhibit E provided, States must draft the contents of the Exhibit E that will be used for the identified wetland ecosystems within each of the geographic areas that the reservation of grazing rights enrollment option will be offered. States must submit the draft Exhibit E to Easement Programs Division (EPD) for review and must receive written approval from EPD to use the Exhibit E before announcing the availability of the reservation of grazing rights enrollment option in the State and

selecting applications for funding. (See subpart U of this part for the template "Exhibit E for the Reservation of Grazing Rights.")

(6) Under the reservation of grazing rights enrollment option, NRCS works directly with landowners. Landowners submit applications directly to NRCS once a reservation of grazing rights enrollment area has been designated. Landowners applying for this enrollment option in a designated reserved rights area must meet the eligibility requirements in subpart K, sections 528.103 and 528.104 of this part. Lands that are enrolled under this option must meet the ACEP-WRE eligibility requirements in subpart K, sections 528.105 and 528.106 of this part.

(7) Easements and 30-year contracts entered into through the reserved rights enrollment process have the same enrollment, acquisition, planning, restoration, management, monitoring, and maintenance requirements as standard ACEP-WRE. Wetland restoration and enhancement actions must maximize wetland functions and values, including wildlife habitat in accordance with the ACEP regulation (7 CFR Part 1468), ACEP policy, and NRCS standards and specifications.

(8) The landowner must acknowledge acceptance of the terms and conditions of the grazing right by executing the deed or 30-year contract with the "Reservation of Grazing Rights, "Exhibit E" attached and by signing the WRPO grazing management plan prior to easement closing or 30-year contract execution by NRCS.

(9) Monitoring of the grazing effects on the habitat objectives determines if adjustments to the grazing management plan are necessary. At least every 5 years, the grazing management plan must be reviewed and updated as necessary. Additional grazing, as determined by NRCS based on site conditions, may only be provided through an approved compatible use authorization.

B. Compensation

Compensation for easements or 30-year contracts entered into under the reservation of grazing rights enrollment option is based on the methods and the resultant values determined in accordance with guidance in this part (see subparts K, M, and O of this part), except that the geographic area rate cap (GARC) that would be applicable to the corresponding enrollment type (permanent easement, less-than-permanent easement, 30-year contract) under conventional ACEP-WRE is reduced by an amount representative of the value of the retained grazing rights, as determined by the Chief.

C. Authorized Funding Levels

(1) NRCS may provide assistance for establishing or implementing practices, measures, or activities specified in the final WRPO. These practices and components must be necessary to achieve the desired wetland functions and values and may be provided at the conventional ACEP-WRE rate (up to 100 percent for permanent easements and up to 75 percent for less-than-permanent enrollments).

(2) Financial assistance is authorized for necessary wildlife-friendly fences detailed in the final WRPO grazing management plan. Additionally, financial assistance is authorized to modify existing fences to wildlife-friendly specifications. Livestock watering facilities as part of the final WRPO grazing management plan may be authorized for financial assistance subject to written authorization from the EPD director, see subpart N, section 528.133E of this part.

(3) No special funds will be allocated for this enrollment option of ACEP-WRE. Applications will be funded from the State's annual ACEP-WRE allocation. Up to 50 percent of the State's annual allocation may be used for this enrollment option. Enrollment obligations in excess of 50 percent of the State's annual allocation must be approved by the Deputy Chief for Programs.

D. NRCS Responsibilities

NRCS responsibilities for the reserved rights enrollment option are the same as regular ACEP-WRE with the following additions:

(i) NHQ.—In addition to ACEP-WRE responsibilities, national leadership for the reserved rights enrollment option is provided by the Chief and the Chief's designee. The Chief will—

- Determine the reduction in the easement compensation value for the reserved grazing rights.
- Develop guidelines for appropriate use of the reservation of grazing rights enrollment option.
- Make available Form NRCS-LTP-33, "Warranty Easement Deed with Reservation of Grazing Rights," template and a template exhibit E.
- Review and approve the exhibit E version that will be used in each grazing reserved rights enrollment area.

(ii) Regional Conservationists

In addition to ACEP-WRE responsibilities, regional conservationists (RCs) provide leadership to the States regarding implementation of the reserved rights enrollment option.

(iii) State Offices.—In addition to ACEP-WRE responsibilities, State leadership for the reserved rights enrollment option is provided by the State conservationist. The State conservationist will—

- Determine if and where the reservation of grazing rights enrollment option will be offered in that State and the level of funding available.
- Work with the State technical committee to provide recommendations on unique wetland ecosystems appropriate for inclusion in this enrollment option, including the types of grazing management conditions that contribute to the wetland functions and values of the unique wetland ecosystem.
- Complete exhibit E to the Form NRCS-LTP-33 for each area selected based upon the template version provided by NHQ and submit the exhibit E to EPD for review and approval.
- Document the designated geographic areas and wetland ecosystems determined appropriate for this enrollment option (e.g., in the State-specific WRCG document).
- Develop as needed specific ranking criteria or ranking pools for the evaluation and prioritization of the wetland ecosystems in the designated geographic areas with EPD-approved Exhibit Es where the reservation of grazing rights enrollment option is being made available.
- Provide notice of the availability of the reserved rights enrollment option within the designated area and the specific requirements for participation, including making a copy of Form NRCS-LTP-33 available to interested applicants.
- Review and approve the WRPO grazing management plan and any updates thereto. The State conservationist may delegate this authority to the State ACEP-WRE manager or coordinator.
- Develop guidelines for the development of grazing management plans that will be incorporated into the WRPO, including the review and updating of such plans at least every 5 years as needed.

- Ensure appropriate implementation of the reservation of grazing rights enrollment option. This option is only offered where grazing is necessary to achieve the desired wetland functions and values of the unique wetland ecosystem on the ACEP-WRE easement or 30-year contract area as described in this subpart.
- Certify, by signing the ACEP-WRE easement or contract, that the reservation of the grazing right is compatible with the land subject to the easement or 30-year contract.
- Assess grazing impacts to determine if additional grazing beyond what is allowed under the Exhibit E and the grazing management plan is appropriate, as determined by NRCS based on site conditions, and if so, follow the compatible use authorization process (see subpart P of this part).

(iv) Field Offices and ACEP-WRE Teams.—In addition to ACEP-WRE responsibilities, responsibilities of the designated conservationists or local NRCS representative, as determined by the State conservationist, are to—

- Coordinate with FWS, State wildlife agency, conservation district, and other appropriate agencies, organizations, or cooperating partners to conduct outreach and implement the reservation of grazing rights enrollment option.
- Determine site eligibility based on appropriate ecological conditions and plant communities historically represented within the proposed easement or contract area.
- Develop the WRPO grazing management plan. The terms and conditions of the grazing management plan must be based upon guidance provided by the State office and developed in consultation with FWS and other partners as appropriate and be compatible with the wetland functions and values, including habitat and species goals and objectives.
- Develop WRPO modifications, including updates to the grazing management plan, as necessary, for State office approval. (See subpart O of this manual for guidance on WRPO and contract modifications.)
- Conduct onsite annual monitoring for the first 3 years of the easement or contract. Due to the nature of the enrollment option, onsite monitoring is necessary to fully gauge the habitat response to the prescribed grazing regime. Monitoring is performed at critical times to measure the success in attaining the identified wetland functions and values, including habitat and species goals and objectives.

C. FWS Responsibilities

FWS is an integral partner to NRCS on the implementation of the reserved rights enrollment option. In addition to ACEP-WRE responsibilities, NRCS includes FWS in the following:

(i) Assisting NRCS with appropriate ecological site determinations for the reserved rights enrollment option

(ii) Assisting NRCS with the WRPO grazing management plan prescription necessary to achieve the desired wetland functions and values and vegetative structure for which the easement is being established

(iii) Providing recommendations to NRCS regarding the location, timing, intensity, frequency, and duration of the grazing activity

(iv) Providing outreach to potential participants

Part 528 – Agricultural Conservation Easement Program

Subpart R – ACEP Easement Subordination, Modification, Exchange, and Termination

528.170 Overview of Easement Administration Action Authority

A. Overview

(1) Once an ACEP easement is in place, including easements enrolled under predecessor programs, the United States holds vested rights and interests that authorize NRCS to make determinations necessary to administer easement rights and interests on behalf of the United States. Any easement administration action decision affecting these vested rights and interests are made at the sole discretion of NRCS, and the consideration of an easement administration action does not vest any rights or privileges in the landowner, an ACEP-ALE eligible entity or easement holder, or third party, and are thus are not program benefits subject to appeal.

(2) An easement administration action means the subordination, modification, exchange, or termination of rights or interests of the United States in an ACEP easement.

(3) This subpart implements easement administration action provisions in accordance with 7 CFR Section 1468.6, which provides NRCS certain administrative mechanisms to ensure that the protection of the viability of agricultural land, grazing uses and related conservation values, and the wetland restoration and protection efforts through NRCS conservation easements will be achieved over the long-term.

(4) After an ACEP easement has been recorded, NRCS will not consider or approve any request for an easement administration action except where NRCS has first determined, in accordance with the sequencing considerations under the National Environmental Policy Act (NEPA), that the criteria in 7 CFR Section 1468.6 and this part are met. NRCS is not required to subordinate, exchange, modify, or terminate any of its rights or interests in an easement, and such easement administration actions are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part.

(5) The requestor of the easement administration action (project proponent) is responsible to provide all required documentation to NRCS.

B. Easement Administration Action Terms and Definitions

(1) "Easement modification" means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to adjust the boundaries or terms of an easement that will result in equivalent or greater conservation value, acreage, and economic value to the United States, and the modification only involves lands within or physically adjacent to the original easement area.

(2) "Easement exchange" means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, relinquishes all or a portion of its real property rights or interests in an easement that are replaced by real property rights or interests granted through an easement that has equivalent or greater conservation value, acreage, and economic value to the United States on land that is not adjacent to the original easement area.

(3) "Easement subordination" means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to subordinate all or a portion of its real property rights or interests in an easement. As determined by NRCS, the subordination must

be in the public interest or further the practical administration of the program, minimally affect the easement acreage, and increase or have limited negative effects on the conservation values of the easement area.

(4) "Easement termination" means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to terminate its rights or interests in an easement or portion thereof to facilitate a project that addresses a compelling public need for which there is no practicable alternative and such termination action will result in equivalent or greater conservation value and economic value to the United States, and NRCS is provided compensation for such termination.

C. Easement Administration Action Threshold Criteria and Requirements

(1) Easement Subordination.—As determined by NRCS, in its sole discretion and in accordance with the NEPA sequencing considerations, a subordination action must meet the following requirements:
   (i) Is concurred with in writing by the landowner, and, for ACEP-ALE, the eligible entity who holds title to the easement.
   (ii) Is in the public interest or will further the practical administration and management of the easement area or the program.
   (iii) Increases conservation functions and values or has a limited negative effect on conservation functions and values.
   (iv) Will result in no net loss of easement acres.
   (v) Is at no cost to the Federal Government.
   (vi) Will only minimally affect the original easement area, generally not more than 1 percent of the original easement area, except under specific circumstances described in paragraph E(2) below.
   (vii) Meets all other requirement of 7 CFR Section 1468.6 and this part.

(2) Easement Modification or Easement Exchange.—As determined by NRCS, in its sole discretion and in accordance with the NEPA sequencing considerations, an easement modification or exchange action must meet the following requirements:
   (i) Is in the public interest.
   (ii) Is concurred with in writing by the landowner, and, if ACEP-ALE, the eligible entity who holds title to the easement.
   (iii) Is in the public interest or will further the practical administration and management of easement area or the program.
   (iv) There is no reasonable alternative that will avoid impacting the easement area or if the easement area cannot be avoided entirely, then the preferred alternative must minimize impacts to the easement area and its conservation functions and values to the greatest extent practicable and any remaining adverse impacts must be mitigated, as determined by NRCS, at no cost to the Government.
   (v) The action is consistent with the original intent of the easement and the purposes of the program.
   (vi) Will result in equal or greater conservation functions and values to the United States. Additionally, the replacement of easement acres as part of an easement exchange must occur in the same 8-digit watershed and within the same State.
   (vii) Will result in equal or greater economic value to the United States. NRCS will make the determination of equal or greater economic value to the United States based upon an approved valuation methodology in place at the time of the easement administration action request unless the terms of the easement require a different methodology, in which case NRCS will comply with the terms of the easement. In addition to the value of the easement itself, NRCS may consider other financial investments it has made in the acquisition, restoration, and management of the original easement to ensure that the

easement administration action results in equal or greater economic value to the United States.

(viii) Will result in no net loss of acres in the program.

(ix) Will not affect more than 10 percent of the original easement area, except under specific circumstances described in paragraph E(2) below.

(x) Modification or exchange of all or a portion of an interest in land enrolled in ACEP-ALE may not increase any payment to an easement holder.

(xi) Meets all other requirements of 7 CFR Section 1468.6 and this subpart.

(3) Easement Termination.—As determined by NRCS, in its sole discretion and in accordance with the NEPA sequencing considerations, an easement termination action must meet the following requirements:

(i) Is in the Federal Government's interest.

(ii) Is concurred with in writing by the landowner, and, if ACEP-ALE, the eligible entity who holds title to the easement.

(iii) Addresses a compelling public need for the easement administration action for which there is no practicable alternative that will avoid impacting the easement area even with avoidance and minimization, and will further the practical administration and management of the easement area or the program.

(iv) The United States will be fully compensated for the fair market values of the rights or interest in the land including any costs and damages related to the termination. NRCS will enter into a compensatory agreement with the proponent of the termination that identifies the costs for which the United States must be reimbursed, including but not limited to the value of the easement itself based upon current valuation methodologies, repayment of legal boundary survey costs, legal title work costs, associated easement purchase and restoration costs, legal filing fees, costs relating to the termination, and any damages determined appropriate by NRCS.

(v) Will not affect more than 10 percent of the original easement area, except under specific circumstances described in paragraph E(2) below.

(vi) Meets all other requirements of 7 CFR Section 1468.6 and this subpart.

D. Federal Action and NEPA Sequencing

(1) This part clarifies that the preferred easement administration action is always avoidance of impacts to the easement area, followed by minimization of impacts to the easement area or rights and interests held by the United States.

(2) An easement administration action affecting an ACEP easement constitutes a Federal action that may adversely affect the environment, and, therefore, NRCS must evaluate any easement administration action under the NEPA found at 42 U.S.C. Section 4321 et seq. In addition to NEPA regulations promulgated by the Council of Environmental Quality, NRCS has supplemental NEPA regulation at 7 CFR Part 650 and its NEPA policy at Title 190, General Manual (GM), Part 410. Under NEPA, NRCS must evaluate the consequences of, and alternatives to, the requested easement administration action.

(i) Because any easement administration action of an ACEP-ALE easement constitutes a Federal action that has the potential to convert important farmland to nonfarm use, NRCS also has a responsibility to evaluate any ACEP-ALE easement administration action under the Farmland Protection Policy Act at 7 U.S.C. Section 4201 et seq. and 7 CFR Part 658.

(ii) Because any easement administration action of an ACEP-WRE easement constitutes a Federal action that may have an adverse impact on wetland resources, NRCS also has a responsibility to evaluate any ACEP-WRE easement administration action request under Executive Order 11990.

(3) NRCS must adhere to a clearly established evaluation sequence when deciding whether to approve or deny a request for an easement administration action, including whether there are practicable alternatives to the easement administration action and the project proponent is willing to adjust the requested action to avoid, minimize, or compensate for the impacts to the easement area. The preferred alternative is always to avoid the easement area. If the easement area cannot be avoided entirely, then the preferred alternative must be based on least impact to the original easement area.

(i) Avoidance.—If there are practicable alternatives or other measures that will avoid impacts of the proposed activity on the ACEP easement, NRCS must deny the easement administration action request.

(ii) Minimization.—If a practicable alternative is not available that avoids adverse impacts to the ACEP easement, then NRCS will identify and inform the project proponent about measures that may minimize adverse impacts to the ACEP easement, and may request the project proponent also provide minimization options. If the project proponent is willing and able to minimize impacts to the ACEP easement, then NRCS may continue to evaluate the merits of the easement administration action request. If there are practicable alternatives or other measures that will minimize the adverse impacts of the proposed activity on the ACEP easement, and the project proponent does not select such alternatives or measures, then NRCS must deny the easement administration action request.

(iii) Compensation.—If NRCS determines that adverse impacts cannot be avoided or minimized, then NRCS may only continue to evaluate the merits of the easement administration request if the project proponent is willing and able to compensate for lost ACEP conservation and economic value by providing lands or measures that meet the specific requirements based on the easement administration action type and is able to meet the requirement that all easement administration actions other than easement termination will result in no net loss of acres enrolled in the program. Compensation may include, but is not limited to, enrolling new acres in ACEP or increasing the protection and function of already enrolled acres. If adverse impacts cannot be avoided, minimized, or adequately compensated for, NRCS must deny the easement administration action request.

E. Additional Criteria

(1) Easement subordinations or modifications that only involve the easement area itself or land physically adjacent to the easement area, are preferred to easement exchanges that involve lands that are not physically adjacent to the original easement area. Easement exchanges are limited to circumstances where there are no available lands adjacent to the original easement area that will meet the easement subordination or easement modification requirements.

(2) The scope of the easement area that may be affected by an easement subordination is limited to 1 percent of the easement area, and for all other easement administration actions is limited to 10 percent of the original easement area. NRCS may only exceed these limits if NRCS determines it is impracticable to achieve the purposes for which the easement was acquired on the original easement area. NRCS may make such determination if there are offsite landscape changes such as catastrophic changes to hydrology, complete loss of agricultural infrastructure, or contamination from hazardous materials from adjacent properties.

(3) To meet the “public interest” criterion for easement subordinations, modifications, or exchanges, or the “compelling public need” criterion for easement terminations, the resulting easement configuration must not only be in the public interest or address a compelling public need, but the project proponent must also demonstrate that it is in the public’s interest or there is a compelling public need for the easement administration action itself.

For example, a proponent seeks to modify an easement boundary to construct a commercial office building and parking lot. The building and parking lot would be constructed on a portion of the existing easement area that includes endangered species habitat. The proponent proposes to replace the acres removed from the easement area with twice as many acres that also offer endangered species habitat. In this example, there may be a compelling public need for the resulting easement configuration by expanding the protection of endangered species habitat, but there is not a compelling public need for the easement administration action itself that would relinquish existing protection for endangered species on the existing easement area for the purposes of a private business enterprise. NRCS will not relinquish Federal protection on a particular land area unless the activity that will replace the Federal ACEP protection of that land area is also for purposes of a compelling public need.

(4) Because easement administration actions could impact the total acres enrolled in the program, all easement administration actions, with the exception of terminations, must result in no net loss of acreage enrolled in the program.

(5) ACEP easements represent a significant public investment in agricultural land and wetland protection and, therefore, easement administration actions are a limited exception to normal business processes and should rarely be recommended or approved under ACEP.

528.171 Easement Administration Action Procedural Requirements

A. Procedural Requirements

(1) Easement administration actions generally evolve from situations that could not be anticipated when the easement was established, such as a new highway or bridge construction project.

(2) Easement administration actions may be initiated by NRCS or proposed by a landowner, an ACEP-ALE easement holder, or a third-party project proponent able to demonstrate that it has the concurrence of the landowner and for ACEP-ALE easements, the ACEP-ALE easement holder, to submit a request for the easement administration action. The ability of a landowner or third party to request an easement administration action does not create any new rights or benefits in a landowner, easement holder, or in an authorized third party, and there is no right of approval created in the landowner, easement holder, or authorized third party. This guidance simply acknowledges the sources of information by which NRCS may consider easement administration actions and that the landowner's concurrence, and for ACEP-ALE easements, the ACEP-ALE easement holder's concurrence, is a necessary precondition for NRCS to consider approval of any easement administration action.

(3) Easement administration actions cannot be authorized to correct a violation of the easement. All easement violations must be fully remediated by the landowner or other identified party, prior to NRCS reviewing or approving an easement administration action proposed by the party responsible for the violation.

(4) The party requesting the easement administration action (project proponent) is responsible for providing a project proposal with all necessary supporting documentation to NRCS.

(5) All criteria and requirements outlined 7 CFR Part 1468.6 and this part must be met before an easement administration action request may be recommended or approved by NRCS. Evaluation of an easement administration action request should be conducted in a stepwise manner as outlined below, such that if the request does not meet one of the criteria, there is no need to continue the evaluation of the remaining criteria as the request cannot be approved. Before an easement administration action request may be recommended for approval, the State conservationist must—

(i) Have written concurrence from the landowners, and easement title holders, if ALE, that they concur with the proposed easement administration action.

(ii) Determine the easement administration action type to be evaluated and proceed in order through the individual threshold criteria identified in section 528.170C above that are applicable to the specific type of easement administration action being evaluated to determine whether all applicable criteria can be satisfied.

(iii) Evaluate the easement administration action request under NEPA, NRCS NEPA compliance policy at 190-GM-410, and this part, including the consequences of, and alternatives to, the requested easement administration action. NRCS must conduct an environmental evaluation (EE) (Form NRCS-CPA-52, "Environmental Evaluation Worksheet") to determine the level of NEPA analysis required according to NRCS policy and regulations. The project proponent must provide sufficient information for NRCS to conduct the EE analysis and may request the project proponent to provide additional information.

Note: If NRCS finds under the NEPA analysis that the easement administration action has not been sufficiently analyzed and an environmental analysis (EA) or environmental impact statement (EIS) is required, then the project proponent must provide all of the necessary environmental compliance documentation to allow NRCS to evaluate the proposed action under NEPA, NRCS NEPA compliance policy at 190-GM-410, and this part. Failure by NRCS to complete the EE (Form NRCS-CPA-52) correctly will not eliminate the need for an EA or EIS by the project proponent and may delay NRCS response to the project proponent.

(vi) Evaluate any ACEP-ALE, including Farm and Ranch Lands Protection Program (FRPP) considered enrolled in ACEP-ALE, easement administration action under the Farmland Protection Policy Act (FPPA) found at 7 U.S.C. Section 4201 et seq. as described in paragraph (6) below, and evaluate any ACEP-WRE easement administration action under Executive Order 11990.

(v) Determine whether the easement administration action is appropriate, considering the purposes of the program and the facts surrounding the request for easement administration action.

(6) Additionally, easement administration actions affecting an ACEP-ALE easement have the potential to convert important farmland to nonfarm use; therefore, under the FPPA, the State conservationist is required to use the land evaluation and site assessment (LESA) system to establish a farmland conversion impact rating score on the portion of ACEP-ALE parcel that could foreseeably be converted to nonfarm use as a direct or indirect result of the easement administration action. The State conservationist must also score the alternatives to the easement administration actions demonstrated by the project proponent and any other practicable alternatives proposed by NRCS.

(i) The State conservationist will use these scores as an indicator of whether an easement administration action will have adverse impacts on the farmland greater than those of any demonstrated or practicable alternative or exceed the recommended allowable level.

(ii) NRCS will not relinquish Federal protection on a protected parcel if the easement administration action will have an adverse impact on the farmland greater than those of a practicable alternative or exceed the recommended allowable level.

(iii) The project proponent must demonstrate—

- What alternatives to the easement administration action were considered and whether the alternative actions would lessen the adverse impact to farmland based on their farmland conversion impact rating score.
- The easement administration action, to the extent practicable, is compatible with State, local government, and private programs and policies to protect farmland.

(7) The State conservationist will determine whether the requested easement administration action is appropriate.

(i) If the State conservationist decides the easement administration action is not appropriate, the State conservationist will notify the project proponent that the request is denied and no appeal is available.

(ii) If the State conservationist determines the easement administration action is appropriate, then the project proponent's request, along with all supporting documentation from the State conservationist, will be submitted to the director of the Easement Programs Division (EPD). The supporting documentation for the request must include, at minimum—

- A letter of determination and findings from the State conservationist, including a summary of the proposal, impacts to the easement, and a statement from the State conservationist concurring with proposed easement administration action and recommending its approval.
- Evaluation under NEPA, providing a copy of the NEPA analysis and applicable FPPA or Executive Order 11990 documentation.
- A map and description of the proposed easement administration action.
- Evidence that easement administration action meets all of the requirements outlined in this part.
- Written support from the local conservation district, and for ACEP-WRE, the U.S. Fish and Wildlife Service, in support of the easement administration action.
- Evidence that the easement administration action is appropriate, considering the requirements and purposes of the program and the facts surrounding the request for easement administration action.
- Concurrence of the landowner, and for ACEP-ALE easements only, the concurrence of the ACEP-ALE easement holder.
- For ACEP-ALE easements only, written concurrence from the landowner that they have been afforded the opportunity to consult a tax professional.
- Any additional materials necessary to provide sufficient information for EPD to determine that the request is consistent with ACEP.

(8) The EPD director will review the submitted materials and make the determination to approve or deny the easement administration action request. The EPD director has delegated authority to approve or deny easement subordination, modification, or exchanges and to deny easement termination requests. If easement termination is requested, the EPD director will review the submitted materials and if the EPD director recommends approval, he or she will provide the materials to the Chief for final determination. Easement termination may only be approved by the Chief, and such approval may not be delegated. At least 90 days prior to taking any termination action, written notice of such termination action will be provided to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(9) The project proponent is responsible for all costs associated with actions involved in the easement administration actions. Easement administration actions may involve many of the same processes that were necessary when the original easement was recorded, including a determination of value, easement boundary survey and description, title search, removal or subordination of any intervening title encumbrances, a new policy of title insurance, and recording of the deed of easement amendment.

(10) Approved easement administration actions made in an amended easement or an subordination agreement, must be duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, removal or subordination of unacceptable title encumbrances, and recordation.

(11) If NRCS denies an easement administration action request at any level, the State conservationist will notify the project proponent that the request is not approved. A decision to deny an easement administration action request is not appealable as such decision is in the sole discretion of NRCS and does not affect any right or benefit of the landowner, title holder, third party, or the project proponent has in ACEP.

528.172 Infrastructure Project Requests

A. Infrastructure project requests are subject to the same easement administration action requirements as any other easement administration action request, but, given the involvement of a project proponent other than the original landowner, further information to address this type of request is provided herein.

B. As the amount of land subject to ACEP conservation easements continues to increase over time, the number of requests to allow infrastructure projects will increase as well. Infrastructure projects may include, but are not limited to—

(1) Overhead and buried electrical transmission lines.
(2) Transportation projects, including road and bridge widening or rerouting.
(3) Airport expansion or installation.
(4) Wind and solar power generation farms.
(5) Various types of pipelines, such as crude oil, natural gas, water supply, sewer, or carbon dioxide.

C. The first response to a request for an easement administration action to allow any infrastructure project is a request from the State conservationist to the proponent to avoid NRCS easement lands. The infrastructure project proponent is responsible for providing sufficient evidence to NRCS that all criteria for an easement administration action have been met, including that impacts to the easement lands cannot be avoided. In circumstance where it has been clearly demonstrated that avoidance of the ACEP easement is not practicable, NRCS may consider easement administration action request affecting an ACEP easement, on a case-by-case basis, using the procedures identified in this subpart.

D. NRCS will review an easement administration action request for infrastructure projects the same as any other request, including whether practicable alternatives exist to avoid the impacts to the ACEP easement. However, NRCS will minimize the potential for conflict with infrastructure projects by coordinating with applicable agencies regarding proposed or permitted routes, rights-of-way, and NRCS enrollment activities. If NRCS at any level is provided notice of an infrastructure project that has the potential to affect one or more NRCS easements, the State program manager in the affected State must be notified immediately. The State program manager will consult with the State conservationist, EPD, and the State program managers in other affected States as necessary and will provide direction to the field on how to proceed.

E. NRCS will avoid enrolling land into ACEP where the intended purpose of the enrollment is to interfere with a permitted infrastructure project. To assist potential project proponents in similarly avoiding existing NRCS easements, each NRCS State office should share Geographic Information System (GIS) shapefiles showing closed easement locations with electrical companies, gas pipeline companies, States departments of transportation, and other Federal agencies on an annual basis for planning purposes and to facilitate avoidance of ACEP easements when planning for infrastructure. Any information shared must be in accordance with the guidance provided in subpart A, section 528.2 of this part.

F. States should notify EPD and the regional Office of the General Counsel (OGC) immediately of any eminent domain proceedings. NRCS easement lands are not subject to condemnation through eminent domain proceedings, except Federal transportation projects where the U.S. Department of

Transportation (DOT) has specific authority to set aside Federal lands (23 U.S.C. Section 317) for such Federal transportation projects. State conservationists should confer with DOT regarding any potential actions and request that DOT not exercise that authority on existing ACEP easements.

G. The right to grant a right-of-way for a proposed infrastructure project that may cross land encumbered by a WRE easement resides primarily with NRCS as the holder of the majority of the surface rights and partly with the landowner as the remaining fee title owner. The rights and interests conveyed to the United States under a WRE easement give NRCS authority to restrict projects from and on easement lands, and WRE lands may not be condemned by State or local entities. NRCS must ensure that lands subject to WRE easements support the intended conservation purposes for which the easements were acquired.

H. The right to grant a right-of-way for an infrastructure project to go across land encumbered by an ALE is often addressed in the terms of the agricultural land easement deed itself, and involves rights and interests of the landowner, the easement holder, and NRCS under the United States right of enforcement. Where a right-of-way may impact the scope of the United States' right of enforcement, NRCS will notify the project proponent of this easement administration action process and that NRCS will address its interests in the land according to these policies and procedures.

I. Projects permitted by such Federal agencies as the Federal Energy Regulatory Commission, Federal Aviation Administration, Department of Energy, Department of State, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, or others, require analysis of environmental impacts, in accordance with NEPA. Under these circumstances, NRCS may request cooperating agency status and participate in the permitting agency or Department's NEPA process. NRCS must conduct an EE on Form NRCS-CPA-52 to determine the level of NEPA analysis required according to NRCS policy and regulations. If NRCS is not a cooperating agency, it must conduct its own independent NEPA analysis. Instances in which NRCS is not a cooperating agency will likely occur when permitting of infrastructure is done by a State or local government agency, and there is no Federal permitting agency. Under these circumstances, NRCS must comply with all Federal laws, including NEPA, if it considers taking any action relative to ACEP easements. Again, the proponent of the infrastructure project must provide the documentation needed for NRCS to complete its environmental review.

J. EPD will contact the appropriate Federal permitting agency or Department and will notify State conservationists of new infrastructure projects and proposed multistate infrastructure routes. If a State is contacted by a Federal permitting agency, department, or infrastructure project proponent, it will notify EPD immediately. State offices will maintain contacts with appropriate Federal, State, and local permitting agencies.

K. In cooperation with the permitting agency, States will ascertain whether proposed or permitted infrastructure routes will impact existing ACEP easements and will notify EPD and OGC of any projects that may be impacted.

L. When the proposed infrastructure lies entirely within the boundaries of a single State, the State conservationist or his or her designee serves as the responsible Federal official (RFO). When the proposed infrastructure crosses multiple States, EPD and the appropriate regional conservationist will coordinate with the affected States to determine which State conservationist will serve as the agency RFO.

528.173 Title Corrections and Legal Adjustments

A. The State conservationist may preliminarily determine that a minor title correction or legal adjustment may be appropriate and submit to the EPD director a request for review and approval of the proposed title correction or legal adjustment. The EPD director will review the submitted materials and make the determination to approve or deny the proposed title correction or legal

adjustment, and will provide in writing, their determination and associated requirements for executing any approved title correction or legal adjustment actions. Title corrections and other legal adjustments include—

(1) Typographical errors.
(2) Minor changes in legal descriptions as a result of survey or mapping errors.
(3) Address changes.
(4) Internal changes on an FRPP or ALE easement that will have a neutral or a positive easement benefit such as the adjustment of a building envelope boundary.
(5) Relocation of easement access.
(6) Temporary work areas.
(7) Acceptance of overlay easements to enhance easement protections.
(8) Donations of easements.
(9) The addition of additional interests or protections such as unification of legal estates.

B. Title corrections and other legal adjustments are case specific and may require different documentation based on the nature of the request that is submitted. At minimum a signed decision memorandum and completed EE (Form NRCS-CPA-52) analyzing the action and its alternatives are required. Additionally, based on the specific action being proposed, draft deeds, agreements or memorandums of understanding, legal surveys, or other supporting documents must be submitted to the EPD Director by the State conservationist as part of the request package. For example, the relocation of a building envelope on an ACEP-ALE requires that the landowner or entity provide a legal survey prior to approval. The EPD Director may request any additional documentation that is necessary to fully analyze the request and render a decision.

C. Execution of an approved title correction or legal adjustment action may also require OGC review, approval, and action to execute the change. The State conservationist must consult with OGC prior to submitting a title correction or legal adjustment request for EPD Director approval. Requests approved by the EPD Director may require the State conservationist to receive specific direction or final approval from OGC prior to proceeding with the title correction or legal adjustment.

D. Subdivision of an FRPP or ALE easement that is described with specificity in the terms and conditions of an entity-held easement deed is not considered a title correction or other legal adjustment and does not require EPD Director review unless such review is required by a deed term.

Part 528 – Agricultural Conservation Easement Program

Subpart T – ACEP Definitions and Acronyms

528.190 Definitions

Additional definitions can be found in 440-CPM, Part 502, "Terms and Abbreviations Common to All Programs." In the event of a discrepancy, the definition contained in this part, prevails for ACEP purposes.

(1) "30-year contract" means an ACEP-WRE contract that is for a duration of 30 years and is limited to acreage owned by Indian Tribes.

(2) "Access" means legal and physical ingress and egress to the entire easement area over adjacent or contiguous lands for the exercise of any of the rights or interests under the easement for the duration of its term for the purposes of the program. Access for easement enrollments must be described in the easement deed.

(3) "Acreage owned by Indian Tribes" means lands held in private ownership by an Indian Tribe or individual Tribal member and lands held in trust by a native corporation, a Tribe, or the Bureau of Indian Affairs. This land may be also be referred to as "Tribal land."

(4) "Active agricultural production" means that on lands that meet the definition of being in agricultural use, agricultural or forest-related products or livestock are being produced or have been produced within 1 year of the date of application by an eligible entity for funding under ACEP-ALE. Land may also be considered in active agricultural production if it is current or former Conservation Reserve Program (CRP) land that is planted, considered planted, or in conserving use as determined by NRCS.

(5) "Agreement" means the document that specifies the rights, requirements, and responsibilities of NRCS and any persons, legal entities, or eligible entities participating in the program or any document that authorizes the transfer of assistance between NRCS and a third party for provision of authorized goods and services associated with program implementation. Agreements may include but are not limited to an agreement to purchase, an ALE-agreement, a buy-protect-sell arrangement, a wetland reserve easement restoration agreement, a cooperative agreement, a contribution agreement, a grant agreement, a partnership agreement, or an interagency agreement.

(6) "Agreement to purchase" means the legal document that is the equivalent of a real estate purchase and sale contract. The landowner signs the agreement to purchase, which is the authorization for NRCS to proceed with the ACEP-WRE acquisition process.

(7) "Agricultural commodity" means any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters or sugarcane planted and produced in a State.

(8) "Agricultural land easement (ACEP-ALE)" means an easement or other interest in eligible land that is conveyed under ACEP-ALE for the purposes of protecting natural resources and the agricultural nature of the land, and of promoting agricultural viability for future generations, and permits the landowner the right to continue agricultural production and related uses subject as applicable, to an agricultural land easement plan.

(9) "Agricultural land easement plan (ALEP)" means:

(i) For Enrollments Under the 2014 Farm Bill.—The document developed by NRCS or provided by the eligible entity and approved by NRCS, in consultation with the eligible entity and landowner, that describes the activities which promote the long-term viability of the land to meet the ACEP-ALE purposes for which the easement was acquired. The agricultural land easement plan includes a description of the farm or ranch management

system, conservation practices that address applicable resource concerns for which the easement was enrolled, and any required component plans, such as a grasslands management plan, forest management plan, or highly erodible land (HEL) conservation plan as defined in this part. Where appropriate, the agricultural land easement plan will include conversion of highly erodible cropland to less-intensive uses.

(ii) For Enrollments Under the 2018 Farm Bill.—A document developed by the eligible entity that describes the activities which promote the long-term viability of the land to meet the purposes for which the easement was acquired. An agricultural land easement plan includes a description of the farm or ranch management system and the natural resource concerns on the land, describes the conservation measures and practices that may be implemented to address applicable resource concerns for which the easement was enrolled, and incorporates by reference any component plans such as a grasslands management plan, forest management plan, or HEL conservation plan as defined in this part.

(10) "Agricultural uses" means those activities defined by a State's farm or ranch land protection program, or, where no program exists, by the State agricultural use tax assessment program. However, if NRCS determines that a State definition of agricultural use is so broad that an included use would constitute a violation of Federal law, limit future agricultural viability, degrade soils or the agricultural nature of the land or the related natural resources, NRCS reserves the right to impose greater deed restrictions on the property to be subject to an agricultural land easement. These deed restrictions would narrow the State definition of agricultural use in order to meet Federal law, or to protect soils, the agricultural nature of the land, or related natural resources.

(11) "ALE-agreement" means the document that outlines the rights, requirements, roles, and responsibilities of NRCS and eligible entities participating in the program under ACEP-ALE, including cost-share payment provisions.

(12) "At-risk species" means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State conservationist, with advice from the State technical committee or Tribal conservation advisory council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

(13) "Bargain sale" means a real estate transaction in which the landowner donates part of the value of the conservation easement by accepting a purchase price less than appraised fair market value.

(14) "Beginning farmer or rancher" means a person, Indian Tribe, Tribal corporation, or legal entity who—

(i) Has not operated a farm or ranch or nonindustrial private forest land (NIPF), or who has operated a farm or ranch or NIPF for not more than 10-consecutive years. This requirement applies to all members of an entity who will materially and substantially participate in the operation of the farm or ranch or NIPF.

(ii) In the case of an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(iii) In the case of a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the

members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(15) "Building envelope" applies to ACEP-ALE only and means an area within which the structures on the farm or ranch are located and within which building may occur on an ACEP-ALE easement. Building envelope limitations and requirements are identified in the agricultural land easement deed. On parcels upon which additional structures will be built after the easement is acquired, the building envelope must be large enough for that construction, the movement of vehicles and farm equipment on impervious surfaces around the structures, and the management of runoff without erosion or flooding. Large farms and ranches may need more than one building envelope to accommodate livestock sheds, equipment sheds, or hay storage structures far from the headquarters building envelope. All impervious surfaces within all of the building envelopes must be within the impervious surface limitation for the ACEP-ALE parcel. Building envelopes are also known as farmstead complexes or farmstead areas.

(16) "Buy-Protect-Sell Transaction" means a legal arrangement between an eligible entity and NRCS relating to land owned or being purchased by an eligible entity on a transitional basis during which an agricultural land easement will be secured on eligible private or Tribal land, and ownership of the land transferred to a qualified farmer or rancher following conditions specified in this part.

(17) "Certified entity" means an eligible entity that NRCS has determined to meet the certification requirements in 7 CFR Section 1468.26 for the purposes of ACEP-ALE.

(18) "Chief" means the Chief of NRCS or the person delegated the authority to act for the Chief.

(19) "Commenced conversion wetland" means a wetland or converted wetland for which the Farm Service Agency (FSA) has determined that the wetland manipulation was contracted for, started, or for which financial obligation was incurred before December 23, 1985.

(20) "Commodity Credit Corporation (CCC)" is a wholly owned Federal Government corporation within the Department of Agriculture.

(21) "Compatible use" means a use or activity conducted on a wetland reserve easement that NRCS determines, in its sole discretion, is consistent with the long-term protection and enhancement of the wetland and other natural values of the easement area when performed according to amount, method, timing, location, frequency, intensity, and duration limitations prescribed by NRCS.

(22) "Conservation district" means any district or unit of State or local government formed under State or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "natural resource district," "land conservation committee," or a similar name.

(23) "(HEL) Conservation plan" is for ACEP-ALE the document that—

(i) Applies to highly erodible cropland.

(ii) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules and, where appropriate, may include conversion of highly erodible cropland to less-intensive uses.

(iii) Is developed in accordance with 7 CFR Part 12.

(24) "Conservation practice" means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS standards and specifications.

(25) "Conservation Reserve Program (CRP)" means the program administered by the CCC as required by 16 U.S.C. Sections 3831–3836.

(26) "Converted wetland (CW or CW+year)" means a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow, circulation, or reach of water) for the purpose of, or to have the effect of, making possible the production of an agricultural commodity if such production would not have been possible but for such action, and, before such action, such land was wetland, farmed wetland, or farmed-wetland pasture and was neither highly erodible land nor highly erodible cropland.

(27) "Cost-share payment" means the payment made by NRCS to an eligible entity for the purchase of an ACEP-ALE easement.

(28) "Dedicated fund" means an account held by a certified nongovernmental organization which is sufficiently capitalized for the purpose of covering expenses associated with the management, monitoring, and enforcement of agricultural land easements and where such account cannot be used for other purposes.

(29) "Easement administration action" means an easement subordination, easement modification, easement exchange, or easement termination as defined in this part.

(30) "Easement area" means the portion of a parcel that is encumbered by an ACEP easement.

(31) "Easement exchange" means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, relinquishes all or a portion of its rights or interests in an easement which are replaced by similar rights or interests in an easement that have equivalent or greater conservation value, acreage, and economic value to the United States on land that is not adjacent to the original easement area. NRCS is not required to exchange any of its rights or interests in an easement, and easement exchanges are discretionary, voluntary real estate transactions between the United States, the landowner, and other parties with an interest in the easement that are subject to the requirements of this part.

(32) "Easement modification" means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to adjust the boundaries or terms of an easement that will result in equivalent or greater conservation value, acreage, and economic value to the United States, and the modification only involves lands within or physically adjacent to the original easement area. NRCS is not required to modify any of its rights or interests in an easement, and easement modifications are discretionary, voluntary real estate transactions between the United States, the landowner, and other parties with an interest in the easement that are subject to the requirements of this part.

(33) "Easement payment" means the consideration paid to a participant or their assignee for an easement conveyed to the United States under the ACEP-WRE or the consideration paid to an Indian Tribe or Tribal members for entering into 30-year contracts under ACEP-WRE.

(34) "Easement restoration agreement" means the agreement or contract NRCS enters into with the landowner or a third party to implement the wetland reserve plan of operations (WRPO) on a wetland reserve easement or 30-year contract.

(35) "Easement subordination" means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to subordinate all or a portion of its rights or interests in an easement. NRCS is not required to subordinate any of its rights or interests in an easement, and easement subordinations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties with an interest in the easement that are subject to the requirements of this part. As determined by NRCS, the subordination must be in the public interest or further the practical administration of the program, minimally affect the easement acreage, and increase or have limited negative effects on the conservation values of the easement area.

(36) "Easement termination" means a real estate transaction where NRCS, on behalf of the United States and in its sole discretion, agrees to terminate all or a portion of its rights or interests in an easement. The termination must address a compelling public need for which there is no practicable alternative even with avoidance and minimization of adverse impacts

and must facilitate the practical administration of the program. The United States must be provided full compensation for such termination and any costs and damages related to the termination. NRCS is not required to terminate any of its rights or interests in an easement, and easement terminations are discretionary, voluntary, real estate transactions between the United States, landowner, and other parties that are subject to the requirements of this part. Unless and until the parties enter into a binding termination agreement, any party may withdraw its approval of a termination proposal at any time during the termination process.

(37) "Eligible activity" means an action other than a conservation practice that has the effect of alleviating problems or improving the condition of the resources, such as ensuring proper management or maintenance of the wetland functions and values restored, protected, or enhanced through an ACEP-WRE easement or 30-year contract as identified in the WRPO.

(38) "Eligible entity" means an Indian Tribe, State Government, local government, or a nongovernmental organization that has a farmland or grassland protection program that purchases agricultural land easements for the purpose of protecting:

(i) The agriculture use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land that negatively affect the agricultural uses and conservation values; or

(ii) Grazing uses and related conservation values by restoring or conserving eligible land.

(39) "Eligible land" means private land or acreage owned by Indian Tribes (Tribal land) that NRCS has determined to meet the land eligibility requirements for ACEP-ALE (subpart D, section 528.33 of this part) or ACEP-WRE (subpart K, section 528.105 of this part).

(40) "Enforcement" means any actions to address violations of the easement or contract, including encroachments or trespasses. Guidance regarding enforcement and violations procedures and requirements applicable to ACEP-WRE is in 440-CPM, Part 527, Subpart S and further specified in this subpart P of this part.

(41) "Enrollment option" means the manner in which land may be enrolled in the ACEP. Under ACEP-WRE, the options are permanent or 30-year easement, easement of maximum duration allowed under State law, or 30-year contract for acreage owned by Indian Tribes. Under ACEP-ALE, the options are permanent easements or maximum duration allowed under State law.

(42) "Environmental benefit" means, for ACEP-WRE, the promotion of habitat for migratory birds and wetland-dependent wildlife, habitat for threatened and endangered or other at-risk species, protection or restoration of native vegetative communities, increased resilience of ecosystems during climatic change, habitat and species diversity and abundance, water quality protection or improvement, attenuation of floodwater flows, and water quantity benefits through increased water storage.

(43) "Environmental threat" means, under ACEP-WRE, onsite or offsite conditions or activities that may have an adverse effect to the wetland restoration process, or interfere with the ability to achieve maximization of wetland functions and values.

(44) "Fair market value (FMV)" means, for an agricultural land easement, the value of an agricultural land easement as determined using the Uniform Standards of Professional Appraisal Practice, an areawide market analysis or survey, or another industry-approved method approved by the Chief, as established in subpart F, section 528.53 of this part, or, for a wetland reserve easement, the value of the land as determined using the Uniform Standards of Professional Appraisal Practices or areawide market analysis or survey, as established in subpart M, section 528.122 of this part.

(45) "Farm and ranch land of local importance" means farm or ranch land used to produce food, feed, fiber, forage, biofuels, and oilseed crops that are locally important but not identified as having national or statewide importance. Criteria for defining and delineating this land are to be determined by the appropriate local agency or agencies. Farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

(46) "Farm and ranch land of statewide importance" means, in addition to prime and unique farmland, land that is of statewide importance for the production of food, feed, fiber, forage, biofuels, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law in accordance with 7 CFR Part 657.

(47) "Farm or ranch succession plan" means a general plan to address the continuation of some type of agricultural business on the enrolled land. The farm or ranch succession plan may include specific intrafamily succession agreements or business asset transfer strategies to create opportunities for new or beginning farmers or ranchers, veteran farmers or ranchers, or other historically underserved landowners.

(48) "Farm Service Agency (FSA)" is an agency of the U.S. Department of Agriculture.

(49) "Field Office Technical Guide (FOTG)" means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant, animal, and energy resources applicable to the local area for which it is prepared.

(50) "Fish and Wildlife Service (FWS)" is an agency of the U.S. Department of the Interior.

(51) "Forest land" means a land cover or use category that is at least 10-percent stocked by single-stemmed woody species of any size that will be at least 13-feet tall at maturity. Also included is land-bearing evidence of natural regeneration of tree cover (cutover forest or abandoned farmland) that is not currently developed for nonforest use. Ten-percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater.

(52) "Forest land of statewide importance" means forest land that NRCS, in consultation with the State technical committee, identifies as having ecological or economic significance within the State and may include forested areas or regions of the State that have been identified through statewide assessments and strategies conducted pursuant to State or Federal law.

(53) "Forest management plan" means a site-specific plan that describes management practices that conserve, protect, and enhance the viability of the forest land. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. Section 2103a) or other plan approved by the State forester.

(54) "Future viability" means the legal, physical, and financial conditions under which the land itself will remain capable and available for continued sustained productive agricultural or grassland uses while protecting related conservation values such as management of the agricultural land easement area consistent with an agricultural land easement plan.

(55) "Grassland" means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pastureland, and rangeland, and improved pastureland and rangeland.

(56) "Grassland of special environmental significance (GSS)" means grasslands that contain little or no noxious or invasive species, as designated or defined by State or Federal law; are subject to the threat of conversion to nongrassland uses or fragmentation; and the land—

(i) Is rangeland, pastureland, shrubland, or wet meadows on which the vegetation is dominated by native grasses, grass-like plants, shrubs, or forbs, or

(ii) Is improved, naturalized pastureland, rangeland, or wet meadows;

(iii) Provides, or could provide, habitat for threatened or endangered species or at-risk species,

(iv) Protects sensitive or declining native prairie or grassland types or grasslands buffering wetlands, or

(v) Provides protection of highly sensitive natural resources as identified by the State conservationist, in consultation with the State technical committee.

(57) "Grasslands management plan" means the site-specific plan that describes the grassland resources, the management system and practices that conserve, protect, or enhance the viability of the grassland, and as applicable, the habitat, species, or sensitive natural resources. A grasslands management plan may be a component of either an agricultural land easement plan or wetland reserve plan of operations.

For ACEP-ALE enrollments under the 2014 Farm Bill: The grasslands management plan will include a description of the grassland management system consistent with NRCS practices contained in the FOTG, including the prescribed grazing standard for easements that will be managed using grazing; the management of the grassland for grassland-dependent birds, animals, or other resource concerns for which the easement was enrolled; the permissible and prohibited activities, including the use of haying as a management tool; and any associated restoration plan or conservation plan.

(58) "Grazing management plan" means for ACEP-WRE as site-specific plan developed as a component of the WRPO that proves for grazing of the grass and grass-like cover while accomplishing the wetland functions and values of the easement as identified by NRCS.

(59) "Historical and archaeological resources" mean resources that meet any of the following criteria:

(i) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 54 U.S.C. Section 300101 et seq.).

(ii) Formally determined eligible for listing in the National Register of Historic Places (by the State historic preservation officer (SHPO) or Tribal historic preservation officer (THPO) and the Keeper of the National Register in accordance with section 106 of the NHPA.

(iii) Formally listed in the State or Tribal register of historic places of the SHPO (designated under section 101(b)(1)(B) of the NHPA) or the THPO (designated under section 101(d)(1)(C) of the NHPA).

(iv) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

(60) "Historically underserved landowner" means a beginning, limited-resource, or socially disadvantaged farmer or rancher, or veteran farmer or rancher.

(61) "Hydric soil" means is a soil that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part (Field Indicators of Hydric Soils in the United States, NTCHS, 1994).

(62) "Imminent harm" means easement violations or threatened violations that, as determined by NRCS, would likely cause immediate and significant degradation to the conservation values for which the easement was acquired.

(63) "Impervious surface" means surfaces that are covered by asphalt, concrete, roofs, or any other surface that does not allow water to percolate into the soil. Under ACEP-ALE roads and parking lots with soil or gravel surfaces and temporary greenhouses that cover the soil surface for less than 6 months are not considered impervious surfaces. Conservation practices in the NRCS FOTG and an agricultural land easement plan for the subject farm or ranch are not considered in the calculation of impervious surfaces for ACEP-ALE.

(64) "Indian Tribe" means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established as required by the Alaska Native Claims Settlement Act (43 U.S.C. Section

1601 et seq.), that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(65) "Invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

(66) "Joint operation" means a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

(67) "Land evaluation and site assessment (LESA) system" means the land evaluation system approved by NRCS and used, when applicable, to rank land for farm and ranch land protection purposes based on soil potential for agriculture, as well as social and economic factors such as location, access to markets, and adjacent land use. For additional information see the Farmland Protection Policy Act regulation at 7 CFR Part 658.

(68) "Landowner" means a person, legal entity, or Indian Tribe having legal ownership of eligible land and those who may be buying eligible land under a purchase agreement. The term landowner may include all forms of collective ownership including joint tenants and tenants-in-common, and includes heirs, successors, assigns, and anyone claiming under them. The term landowner also includes both the owners of a life estate interest in land and the owners of a remainder interest in land that is subject to a life estate, and includes both the purchasers and sellers under an active contract for deed, contract for sale, land contract or other similar "lease to own" land purchase financing arrangement. State governments and local governments are not eligible as landowners. For ACEP-ALE, nongovernmental organizations and Indian tribes that qualify as eligible entities are not eligible as landowners unless otherwise determined by the Chief following an approved buy-protect-sell transaction.

(69) "Lands substantially altered by flooding" means agricultural lands where flooding has created wetland hydrologic conditions which, with a high degree of certainty, will develop and retain wetland soil, hydrology, and vegetation characteristics over time.

(70) "Land that furthers a State or local policy consistent with the purposes of the program" means land that meets the other criteria of eligible land and meets the policy of a State or local government as certified by the State or local government.

(71) "Legal entity" means an entity created under Federal or State law that meets either of the following criteria:

(i) Owns land or an agricultural commodity, product, or livestock

(ii) Produces an agricultural commodity, product, or livestock

(72) "Limited-resource farmer or rancher" means either of the following:

(i) A person who meets both of the following criteria:

- With direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service)
- Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using the U.S. Department of Commerce Data)

(ii) A legal entity or joint operation if all individual members independently qualify under paragraph (i) above.

(73) "Maintenance" means work performed to keep the wetland reserve easement lands functioning for program purposes for the duration of the enrollment period. Maintenance includes actions and work performed to manage, prevent deterioration, repair damage, or replace conservation practices or eligible activities on a wetland reserve easement, as approved or conducted by NRCS.

(74) "Management" in the context of ACEP-WRE enrollments, means the eligible activities or measures necessary to properly manage wetland functions and values (especially wildlife

habitat) for which the land was enrolled in ACEP-WRE, for the duration of the enrollment. Management needs and requirements may change over time depending on the wetland functions and values and habitat on the enrolled area.

(75) "Monitoring" means the periodic review and assessment of how land enrolled in ACEP is meeting program purposes and objectives and the landowner's program compliance, and for ACEP-WRE includes an assessment of the ecological functioning of the site. Guidance regarding monitoring procedures and requirements are addressed in 440-CPM, Part 527, Subpart P and further specified in subpart P of this part.

(76) "Monitoring report" means a report, the contents of which are formulated and prepared by the easement holder, or their delegate, that accurately documents on an annual basis whether the land subject to easement is in compliance with the terms and conditions of the easement.

(77) "Natural Resources Conservation Service (NRCS)" means an agency of the U.S. Department of Agriculture, including when NRCS carries out program implementation using the funds, facilities, or authorities of the CCC.

(78) "Nongovernmental organization (NGO)" means any organization that for purposes of qualifying as an eligible entity under ACEP-ALE meets all of the following criteria:

(i) Is organized for, and at all times since the formation of the organization has been operated principally for, one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986.

(ii) Is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under 501(a) of that code.

(iii) Is described in either of the following:

- Section 509(a)(1) and (2) of the Internal Revenue Code of 1986.
- Section 509(a)(3) of the Internal Revenue Code of 1986 and is controlled by an organization described in section 509(a)(2) of that code.

(79) "Nonindustrial private forest land (NIPF)" means rural land, as determined by the NRCS, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

(80) "Nonseasonal" refers to a nonpermanent installed structure or cover that will be removed from the soil surface periodically during the growing season.

(81) "Noxious weed" means any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment. Noxious weeds will generally possess one or more of the characteristics of being aggressive and difficult to manage, parasitic, a carrier or host of deleterious insects or disease, and being non-native, new to, or not common to the United States or parts thereof.

(82) "Other interests in land" include any right in real property other than easements that are recognized by State law that the Chief determines can be purchased by an eligible entity to further the agricultural use of the land and other ACEP-ALE purposes.

(83) "Other productive soils" means farm and ranch land soils, in addition to prime farmland soils, that include unique farmland or farm and ranch land of statewide and local importance.

(84) "Parcel" means the defined area of land and may be a portion or all of the area of land that is owned by the landowner.

(85) "Participant" means a person, legal entity, Indian Tribe, native corporation, or eligible entity who has been accepted into the program and who is receiving payment or who is responsible for implementing the terms and conditions of an agreement to purchase, an agreement to enter 30-year contract, or an ALE-agreement.

(86) "Pending offer" means a written bid, contract, or option between a landowner and an eligible entity for the acquisition of an agricultural conservation easement in perpetuity, or for

the maximum duration allowed under State law, before the legal title to these rights has been conveyed for the purposes of protecting:

(i) The agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land; or

(ii) Grazing uses and related conservation values by restoring or conserving eligible land.

(87) "Permanent easement" means an easement that lasts in perpetuity.

(88) "Person" means a natural person.

(89) "Prairie Pothole Region" means the counties designated as part of the Prairie Pothole National Priority Area for the CRP as of June 18, 2008.

(90) "Prime farmland" means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor without intolerable soil erosion, as determined by NRCS.

(91) "Private land" means land that is not owned by a governmental entity and includes acreage owned by Indian Tribes, as defined in this part.

(92) "Projects of special significance" means ACEP-ALE projects identified by the Chief using the criteria identified in subpart E, section 528.43D of this part.

(93) "Purchase Price" means the appraised fair market value of the agricultural land easement minus the landowner donation.

(94) Responsible Federal Official (RFO).—The agency official who is authorized to make specific decisions. The NRCS Chief is the RFO for compliance with the National Environmental Policy Act (NEPA) regarding proposed legislation, programs, legislative reports, regulations, and program EISs. NRCS State conservationists (STCs) are the RFOs for compliance with the provisions of NEPA in other NRCS-assisted actions. (NRCS eDirectives, 190-GM, Part 410, Subpart A, Section 410.4.)

(95) "Right of enforcement" means the right of the United States to enforce the easement entered into under this part in those instances in which the grantee of the easement does not fully protect the interests provided to the grantee under the easement.

(96) "Rights of the United States" means the interests in a conservation easement held by the United States, which the United States may exercise under specific circumstances in order to take sole ownership of the conservation easement and enforce its terms. This applies only to Farm and Ranch Lands Protection Program (FRPP) conservation easement deeds pursuant to cooperative agreements entered into in 2006 through 2008.

(97) "Riparian areas" means areas of land that occur along streams, channels, rivers, and other water bodies. These areas are normally distinctly different from the surrounding lands because of unique soil and vegetation characteristics, may be identified by distinctive vegetative communities that are reflective of soil conditions normally wetter than adjacent soils, and generally provide a corridor for the movement of wildlife.

(98) "Secretary" means the Secretary of the U.S. Department of Agriculture.

(99) "Socially disadvantaged farmer or rancher" means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For a legal entity, at least 50-percent ownership in the legal entity must be held by socially disadvantaged individuals.

(100) "State conservationist" means the NRCS employee authorized to direct and supervise NRCS activities in a State, and includes the directors of the Caribbean Area (Puerto Rico and the Virgin Islands), or the Pacific Islands Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

(101) "State technical committee (STC)" means a committee established under 16 U.S.C. Section 3861 and 7 CFR Part 610, Subpart C.

(102) "Unique farmland" means land other than prime farmland that is used for the production of specific high-value food and fiber crops as determined by NRCS. It has the special

combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in 7 CFR Parts 657 and 658.

(103) "Veteran farmer or rancher" means a producer who meets the definition in section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. Section 2279(a)).

(104) "Wetland" means land that meets all of the following criteria:
(i) Has a predominance of hydric soils.
(ii) Is inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.
(iii) Supports a prevalence of such vegetation under normal circumstances.

(105) "Wetland functions and values" means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including—
(i) Habitat for migratory birds and other wildlife, in particular at-risk species.
(ii) Protection and improvement of water quality.
(iii) Attenuation of water flows due to flood.
(iv) The recharge of ground water.
(v) Protection and enhancement of open space and aesthetic quality.
(vi) Protection of flora and fauna which contributes to the Nation's natural heritage.
(vii) Carbon sequestration.
(viii) Contribution to educational and scientific scholarship.

(106) "Wetland reserve easement" (ACEP-WRE) means a reserved interest easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys all rights, title, and interests in a property to the United States, but the landowner retains those rights, title, and interests in the property which are specifically reserved to the landowner in the easement deed.

(107) "Wetland reserve plan of operations (WRPO)" means the document that is developed or approved by NRCS that identifies how the wetland functions and values and associated habitats on the easement will be restored, improved, protected, managed, maintained, and monitored to achieve the purposes of the wetland reserve easement enrollment.

(108) "Wetland restoration" means the rehabilitation of degraded or lost wetland and associated habitats pursuant to published State-specific criteria and guidelines developed in coordination with the State technical committee in a manner such that:
(i) The original, native vegetative community and hydrology are, to the extent practical, reestablished; or
(ii) A hydrologic regime and native vegetative community different from what likely existed prior to degradation of the site is established that will:
- Substantially replace the original habitat functions and values while providing significant support or benefit for migratory waterfowl or other wetland-dependent wildlife; or
- Address local resource concerns or needs for the restoration of wetland functions and values for wetland-dependent wildlife as identified in an approved State wildlife action plan or NRCS national initiative.

(109) "Wildlife" means nondomesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

528.191 Acronyms

Additional acronyms and abbreviations may be found in 440-CPM, Part 502, "Terms and Abbreviations Common to All Programs." In the event of a discrepancy, the abbreviation contained in this 440-CPM, Part 528, will prevail for ACEP purposes.

(1) AAI—all appropriate inquiries
(2) ACEP—Agricultural Conservation Easement Program
(3) ACEP-ALE—Agricultural Conservation Easement Program – Agricultural Land Easement
(4) ACEP-WRE—Agricultural Conservation Easement Program – Wetland Reserve Easement
(5) AECLU—agreement to enter contract for 30-year land use (WRE only)
(6) AGI—adjusted gross income
(7) ALEP—agricultural land easement plan (ALE only)
(8) ALTA—American Land Title Association
(9) AMA—Agricultural Management Assistance Program
(10) APCE—agreement for the purchase of a conservation easement (WRE only)
(11) AWMA—areawide market analysis
(12) BIA—U.S. Bureau of Indian Affairs
(13) BLM—U.S. Bureau of Land Management
(14) B-P-S—Buy-Protect-Sell (ALE only)
(15) CAH—NRCS Contribution Agreements Handbook
(16) CCC—Commodity Credit Corporation
(17) CCR—Central Contractor Registration
(18) CD——conservation desktop
(19) CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act
(20) CFDA—Code for Federal Domestic Assistance
(21) CFR—Code of Federal Regulations
(22) CPC—conservation program contract
(23) CPM—Conservation Program Manual
(24) CREP—Conservation Reserve Enhancement Program
(25) CRP—Conservation Reserve Program
(26) CSP—Conservation Security Program
(27) CST—Customer Service Toolkit
(28) CUC—certificate of use and consent
(29) CY—calendar year
(30) DOJ—U.S. Department of Justice
(31) DUNS—Dun and Bradstreet Data Universal Numbering System
(32) EIN—employee identification number
(33) EAB—Easement Acquisition Branch (formerly Easement Support Service Branch (ESS))
(34) EFT—electronic fund transfer
(35) EPD—Easement Programs Division
(36) EQIP—Environmental Quality Incentives Program
(37) ESA—Endangered Species Act of 1973
(38) EWRP—Emergency Wetland Reserve Program
(39) FAADS—Federal Assistance Award Data System
(40) FAR—Federal Acquisition Regulation
(41) FCIP—final certificate of inspection and possession
(42) FIPS—Federal Information Processing Standard
(43) FIRREA—Financial Institution's Reform, Recovery and Enforcement Act of 1989
(44) FGCAH—Federal Grants and Cooperative Agreements Handbook
(45) FMMI—Financial Management Modernization Initiative

(46) FMV—fair market value
(47) FOIA—Freedom of Information Act
(48) FOTG—NRCS Field Office Technical Guide
(49) FPAC-BC—Farm Production and Conservation – Business Center
(50) FPAC-BC AD—FPAC-BC Acquisitions Division (formerly Contracting Services Branch (CSB))
(51) FPAC-BC GAD—FPAC-BC Grants and Agreements Division (formerly Grants and Agreements Service Branch (GASB))
(52) FPAC-BC POS—FPAC-BC Payment operations section (formerly Accounts Payable Support Branch (APSB))
(53) FRPP—Farm and Ranch Lands Protection Program
(54) FPP—Farmland Protection Program
(55) FSA—USDA Farm Service Agency
(56) FTO—final title opinion
(57) FWS—U.S. Fish and Wildlife Service
(58) FY—fiscal year
(59) GARC—geographic area rate cap (WRE only)
(60) GIS—Geographic Information System
(61) GM—General Manual
(62) GPS—Global Positioning System
(63) GRP—Grassland Reserve Program
(64) GSS—grassland of special environmental significance (ALE only)
(65) HEL—highly erodible land
(66) HFRP—Healthy Forest Reserve Program
(67) IAS—Integrated Accountability System
(68) IBIL—Internet Billing System
(69) IC—internal controls
(70) IPP—Invoice Processing Platform
(71) IRC—Internal Revenue Code of 1986
(72) IRS—U.S. Internal Revenue Service
(73) LESA—land evaluation and site assessment
(74) NAD—USDA National Appeals Division
(75) NASS—USDA National Agricultural Statistical Survey
(76) NEPA—National Environmental Policy Act
(77) NEST—National Easement Staging Tool
(78) NFC—National Financial Center
(79) NFSAM—National Food Security Act Manual
(80) NGCE—NRCS National Geospatial Center of Excellence
(81) NGO—nongovernment organizations
(82) NHPA—National Historic Preservation Act
(83) NHQ—National Headquarters
(84) NPPH—National Planning Procedures Handbook
(85) NRCS—Natural Resources Conservation Service
(86) NSSH—National Soil Survey Handbook
(87) OGC—Office of the General Counsel
(88) O&M—operation and maintenance
(89) PCIP—preliminary certificate of inspection and possession
(90) PTO—preliminary title opinion (WRE only)
(91) RC—regional conservationist
(92) RFP—request for proposals
(93) RFO—Responsible Federal Official

(94) SAM—System for Award Management
(95) SCIMS—Service Center Information Management System
(96) SHPO—State historic preservation officer
(97) SSN—Social Security number
(98) STC—State technical committee
(99) TDR—transfer development rights
(100) THPO—Tribal historic preservation officer
(101) TIN—tax identification number
(102) TOPA—Transfer of Purchase Agreement for Easement Programs
(103) TSP—technical service provider
(104) UASFLA—Uniform Appraisal Standards for Federal Land Acquisitions
(105) USDA—U.S. Department of Agriculture
(106) USFS—U.S. Forest Service
(107) USPAP—Uniform Standards of Professional Appraisal Practices
(108) WBS—FMMI work breakdown structure
(109) WC—wetland conservation compliance
(110) WED—warranty easement deed (WRE only)
(111) WHIP—Wildlife Habitat Incentives Program
(112) WRCG—Wetland Restoration Criteria and Guidelines
(113) WREP—Wetland Reserve Enhancement Partnership
(114) WRP—Wetland Reserve Program
(115) WRPO—wetland reserve plan of operations