

**From:** [Sandy Smith](#)  
**Subject:** FarmBillAdvocates: Thanks for Your Input on New ALE Rules  
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Dear David,

Thanks to the many folks who joined us for this week's webinars with NRCS. It was a great opportunity to get questions answered and comment on the new rules implicit in the just-released Agricultural Land Easements application forms, cooperative agreement, required easement language, and appraisal specifications.

Here are some highlights of what came out:

For the most part, NRCS is following the rules it already had for FRPP and GRP in FY 2014, so it can get going on projects now without further changes to rules. It will have a rulemaking process this summer, which could change things for FY 2015 (starting October 1, 2014).

**Cash match waiver:** NRCS still will require the eligible entity to bring some cash to the table, even with a waiver. The new norm is a lot like the old norm – you have to provide cash equivalent to 50% of what NRCS provides. The waiver reduces that requirement to 25% of what NRCS provides (12.5% of the fair market value). If your state has a state tax credit for conservation easements, a waiver would reduce the cash cost share to 10% of what NRCS provides – 5% of FMV. That is regardless of whether the landowner actually got a state tax benefit (do not submit tax returns, please).

**Grasslands of Special Environmental Significance Waiver:** The CPA 41 (entity application) and CPA 41A (project or parcel application) both have questions asking if the project is a “grassland of special environmental significance.” This is language from the law that qualifies for NRCS providing 75% of the fair market value. If you qualify for that, the entity’s cost share would be half the remaining amount – 12.5% of the fair market value. If the project is in a state with a state tax credit for conservation easements, the cash required would be reduced to 7.5% of the fair market value.

If your entity is doing both “grasslands of special environmental significance” and other ALE projects that wouldn’t qualify for that – either with or without a cost-share waiver – you need to submit 2 separate CPA-41 forms – one checking the grasslands of special environmental significance box, and one not. This is an artifact of NRCS’s accounting systems.

**Subdivisions:** The required language on subdivisions has changed. It

used to say that NRCS cannot, post-closing, approve any subdivision of an eased property if the portions are less than the *average* farm or ranch size in the county. Now it limits NRCS approval to subdivisions where the portions are less than the *median* farm or ranch size in the county. This information is in the new USDA Census of Agriculture. I believe that if you specify subdivisions in the easement document, you can argue their applicability with the state NRCS, regardless of size.

NRCS has removed prior required language in FRPP relating to restricting water rights.

**ALE plans:** The statute requires an Agricultural Land Easement Plan. That plan includes a Highly Erodible Lands management plan, written by NRCS. It also must include a forest management plan and a grasslands management plan if there are significant forest or grassland components to the easement. Those plans can be written by NRCS, or by the eligible entity – though they will have to meet the requirements laid out in state NRCS technical manuals. For grassland management plans, those guidelines are in the GRP portion of the state NRCS technical manual. If you want to do the plan, you need to specify that on the application! These plans are approved by the state NRCS office.

**REPI:** NRCS is aware of changes in the law on using DOD funds as a match for ALE, and their attorneys are still sorting through whether REPI funds will be allowed as a match.

**Structures:** The new minimum easement language now allows agricultural buildings outside the building envelope. They are, of course, subject to the impervious cover limit. Inside a building envelope, the new language seems to have gotten rid of restrictions on who is living there. Residential use is OK (and it needn't be the farmer), as is farm worker housing.

The recorded conversations and chat transcripts are available on our [Farm Bill page](#).

Thanks for your help,

Russ

*P.S. -- This email list is for land trust leaders that are interested in the Farm Bill. Please let me know if there others at your organization or its partners who would like to subscribe.*

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