

United States Department of Agriculture



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October 9, 2007

CONSERVATION PROGRAMS MANUAL  
440-V-CPM  
AMENDMENT VA5

SUBJECT: Conservation Programs Contracting

Purpose: To transmit a Virginia Supplement to the Conservation Programs Manual (CPM), Subpart F (Contract Administration) and Subpart J (Exhibits).

Effective Date: This amendment is effective upon receipt.

Filing Instructions: Remove page VA-512.E-7 (1). Remove pages VA-512.F.12 (1) through VA-512.F.12 (3). Insert pages VA-512.F-1 through VA-512.F-2 after National page 512.F-2. Insert page VA-512.F-3 after National page 512.F-14. Remove page VA-512.J(x-1). Insert pages VA-512.J-1 through VA-512.J-4 after National page 512.J-8. An electronic version will be posted on the Virginia NRCS website.

A handwritten signature in blue ink that reads "W. Ray Dasth".

JOHN A. BRICKER  
State Conservationist

Acting For

Attachments

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## Part 512 – Conservation Program Contracting

### Subpart F – Contract Administration

#### VA 512.50 Modifications

##### B. Modification Process

- (1) All reasons for contract modifications must be clearly stated on the AD-1156 and must comply with the approved reasons for modifications in the Conservation Program Contracting Manual Part 512.50 (b) and (c) or the appropriate program manual. When a modification is made in Protracts, the reasons for the modification are to be recorded by the Designated Conservationist in a pop-up window which appears during the modification process. The stated reason must be clear, concise and complete. The comments are transferred onto the AD-1156, which is then printed for signatures.
- (2) All contract modifications are to be made in Protracts regardless of whether a signature is required or not. No pen and ink changes are permitted to contracts.
- (3) Where additional funds are needed to address modifications due to cost overruns or NRCS technical errors, the additional funds will be taken out of the fund reserve for the appropriate contract year. Modifications cannot be approved if funds are not available.
- (4) A change in scope for contracts is **NOT** allowed in EQIP contracts. EQIP contracts allow for practice substitution if a justifiable alternative is required. EQIP does not allow new practices to be added to the contract. WHIP does allow for a change in scope for the addition of new practices. Modifications for change in scope should follow the appropriate WHIP program manual guidance. Any change in scope of a WHIP contract must be concurred with by the Assistant State Conservationist for Field Operations (ASTC-FO) or designee and the WHIP Program Manager.
- (5) Contract changes:
  - (i) Minor contract changes that do not increase or decrease the current obligation by more than \$1,000 per item can be made at the field office level by the appropriate Designated Conservationist. (See 440-Part 512.50A (ii).)
  - (ii) Contract changes greater than \$1,000, but less than \$10,000 must be approved within Protracts and made by the ASTC-(FO) or designee.
  - (iii) Any contract changes greater than \$10,000 must be approved by the State Conservationist or designee.

(iv) Any contract modification can only extend the planned implementation date once to the next feasible implementation date (for agronomic planting) but no more than 12 months from the date the modification is signed for any practice.

(v) Each line item in the contract may be modified only one time at the field office level. Any repeated modifications must be approved by the ASTC (FO) (or designee) regardless of amount. Exception: The annual addition of a Technical Service Provider payment from the posted “Not to Exceed Rates” found on the TechReg website.

## **VA512.57 Canceling and Terminating Contracts**

### **A. Cancellation versus Termination**

(1) The following set of decision matrixes provides field offices with a tool for selecting the proper course of action when dealing with contracts. The matrixes are as follows:

- Termination of contracts (Subpart J, VA512.91)
- Cancellation of contracts (Subpart J, VA512.92)
- Expiration of contracts (Subpart J, VA512.93)

(2) The matrixes apply to all contracts covered under the Farm Bill (EQIP, WHIP, GRP, WRP, and CSP). PL-566 and PL-534 contracts will be handled according to General Manual guidance.

(3) Care needs to be exercised in the selection of the proper condition for cancellation versus termination. All requests will be generated at the field office level, with supporting documentation, and forwarded to the Area Office for review and concurrence. Area Offices will then forward all requests to the State Office for the appropriate action.

## **VA512.58 Recovery of Cost**

### **B. Liquidated Damages**

(1) The State Conservationist will waive recovery of liquidated damages for all contract terminations where no financial assistance funds have been earned or paid.

(2) The State Conservationist will assess liquidated damages for all contract terminations where cost-share funds are being recovered where environmental benefits are not achieved. This assessment will be based on the concurrence of the ASTC (FO) as documented on the Virginia Contract Cancellation/Termination worksheet.

(3) The State Conservationist will waive recovery of liquidated damages for all contract terminations where cost-share funds are not being recovered due to the good faith efforts by the producer and with the concurrence of the ASTC (FO) as documented on the Virginia Contract Cancellation/Termination worksheet.

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Subpart J – Exhibits

VA512.91

Exhibit 2 – Termination Action Matrix

Termination of existing contracts will be initiated by NRCS as a result of a material breach of the terms and conditions of the contract. Termination is an adverse action and must be fully documented as to the cause for the termination and the procedure used by NRCS to ensure that the participant has been provided an opportunity to remedy the violation as required by the specific program regulation. A contract is in non-compliance based on practice not installed on schedule, not maintained or destroyed. Participant is willing to continue on with contract and correct deficiencies (operating in good faith).

<b>Request due to:</b>	<b>Action</b>	<b>Notes</b>
A. Contract is in non-compliance based on practice not installed on schedule, not maintained, or destroyed. Participant is willing to modify contract and take corrective action.	A. Delay termination action but revise contract per CPM 440- 512.50 Modification Process.	A. Note 12 month time limit.
B. Contract is in non-compliance based on practice not installed on schedule, not maintained, or destroyed. Participant is not willing to modify contract or take corrective action.	B. Terminate and recover all costs (include liquidated damages). Provide appeal rights notice to participant.	B. Effective with all contracts from October 1, 2006.
C. Contract is in non-compliance based on some practices not implemented. Installed practices have met the resource need and have solved the problem. Uninstalled practices do not affect the ranking score of the contracts.	C. Terminate without cost recovery. Provide appeal rights notice to participant.	C. Documentation of ranking score with and without practices required in case file.
D. Contract is in non-compliance based on some practices not implemented. Installed practices meet only partial resource needs. Un-installed practices are still needed to address resource concern. Un-installed practices affect total ranking score.	D. Take appropriate action listed in Termination A or B listed above.	D. Documentation of ranking score with and without practices required in case file.
E. Contract was obtained under a scheme, device or deliberate misinformation.	E. Terminate and recover all costs, including liquidated damages. Provide appeal rights to landowner.	
F. Contract is in non-compliance based on no practices were ever installed. Participant does not want to revise and continue contract. No money has ever been paid out.	F. Terminate without cost recovery. Provide appeal rights notice to landowner.	

Subpart J – Exhibits

VA-512.92

Exhibit 3– Cancellation Action Matrix

Cancellations of existing contracts will be considered based on a written request from the producer. All requests must address at least one of the items of justification listed in CPM 440-512.57. Written documentation must accompany the request in order to verify claim. Use of NRCS-LTP-153 can be used for this documentation.

<b>Request due to:</b>	<b>Action</b>	<b>Notes</b>
<p>A. Loss of control of land or unable to continue due to sale of land, loss of farm lease, or land converted to non-program purpose.</p> <p>B. Loss of control of land or unable to continue operating due to uncontrollable event or documented hardship such as death, bankruptcy, illness or destruction of farm property through fire or theft.</p> <p>C. Change in operation or removal of existing resource concerns due to management changes.</p>	<p>A1. Approve without cost recovery if successor in interest assumes the existing contract and agrees to complete.</p> <p>A2. Approve without cost recovery if installed practices will be maintained and will continue to function as intended by agreement with new owner.</p> <p>A3. Approve with cost recovery of all costs if conservation benefits will not be maintained by agreement with new owner. Provide appeal rights to landowner.</p> <p>A4. For CSP, approve with cost recovery plus interest due to variable rate payments. Provide appeal rights notice to landowner.</p> <p>B. Approve without cost recovery.</p> <p>C1. Approve without cost recovery provided previously installed practices will function and be maintained.</p>	<p>A1. For open contracts with practices remaining to be implemented; will require modification to list entire contract into new owner’s name (New owner must assume lifespan requirements.)</p> <p>A2. Will need written agreement by new owner to maintain practices for the lifespan of the practice(s); refer to 1245 signature block.</p> <p>A3. Cost recovery will include liquidated damages.</p> <p>B. Must have written documentation.</p> <p>C1. As long as practices remain functional, but no requirement that they be used, i.e. manure pits, water troughs, etc.</p>

<p>D. Reason not of a hardship.</p>	<p>C2. Seek termination if practices are destroyed or not maintained in good working order.</p> <p>D. Approve with recovery of all possible costs. Provide appeal rights notice to landowners.</p>	<p>D. Cost recovery will include liquidated damages.</p>
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Subpart J – Exhibits

VA-512.93

Exhibit 4– Expired Contract Action Matrix

Contracts may have expired with or without all of the practices being implemented as planned. In addition, completed contracts may have practices destroyed during the active lifespan of the practices.

<b>Conditions</b>	<b>Action</b>	<b>Notes</b>
A. Contract has expired and practice(s) with active lifespan has been destroyed or is not being maintained. Participant agrees to replace, refurbish and maintain.	A. Develop plan of action to replace or refurbish all practices destroyed or not maintained. Document all communication with producers and give 12 month time period to replace all practices at the producer’s expense. Longer time periods will need State Conservationist approval.	A. No financial assistance is allowed from any program to replace or refurbish practices.
B. Contract has expired and practice(s) with active lifespan has been destroyed or is not being maintained. Participant refuses to restore the practice to functional order.	B. Recover all costs including liquidated damages for destroyed or failing practices. Provide appeal rights to the producer.	B. Applies even if land has been sold and new owner is not willing to implement. Original producers who signed contract and 1245 are still responsible.
C. Contract has expired and practice that received a partial payment was not completed.	C. Follow termination procedures and recover cost if environmental benefits have not been achieved.	
D. For any reason a contract has expired and not been fully completed and was not addressed by annual contract review and termination procedures.	D. Follow termination procedures and recover all costs.	