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SUBJECT: LTP–Conservation Stewardship Program–Modifications

Purpose. To provide guidelines for modifying Conservation Stewardship Program (CStP) contracts

Expiration Date. September 30, 2014

The CStP requires under Title 7 Code of Federal Regulations (CFR), §1470.23, that the participant will maintain and manage existing conservation activities on the agricultural operation to at least the level of conservation stewardship performance identified at the time the application is obligated into a contract for the conservation stewardship contract period, and additional activities installed and adopted over the term of the conservation stewardship contract.

Under Title 7 CFR, §1470.25(a), a participant may modify a conservation stewardship contract if the Natural Resources Conservation Service (NRCS) determines that the modification is consistent with achieving the purpose of the program. Additionally, a participant has agreed not to undertake any actions on land under their effective control which defeats the purpose of the program, including reducing the conservation performance level of land under contract. Any change to the conservation activities agreed–to under the contract has the potential to reduce performance level and thus may place a participant in violation.

Contract modifications are specific changes to a contract that may require an NRCS approving official and participant signature. All modifications require proper supporting documentation and notes to the participant’s case file explaining in detail the actions taken. Contracts may be modified-

- If the state conservationist or delegated official determines the modification is consistent with the purposes of the program

(more)

DIST: A, F, S, Franklin, Loren Graff

- As required by the state conservationist or delegated approving official due to changes to the operation that would interfere with achieving the purposes of the program
- If an error is discovered and corrective actions are needed to avoid an erroneous payment
- To comply with a formal appeal decision

When a conservation stewardship contract modification request would result in a decrease of the conservation performance level, the state conservationist (STC) may only approve such modification request if the reason for the decrease is for failure to fully comply with the contract due to circumstances beyond the control of the participant.

NOTE: Voluntary land conversion activities are likely not for circumstances beyond the control of the participant.

Operational Adjustment Modifications

Operational adjustments must be treated as potential contract violations. The contract review process (Conservation Programs Manual [CPM], Part 512, Section 512.55) must be followed and a Form NRCS-CPA-153, Agreement Covering Non-Compliance with Provisions of Contract, completed. The STC has the authority to determine if the potential contract violation can be resolved. Operational adjustments are needed due to modifications that potentially impact conservation performance and require access to the Conservation Measurement Tool (CMT) for evaluations and include:

- 1) Losing control of land under contract.
- 2) Adjusting the schedule of operations.
- 3) Deleting CStP contracted acres accepted for enrollment in the Conservation Reserve Program (CRP), Wetlands Reserve Program (WRP), Grassland Reserve Program (GRP), or other federal or state programs that provide increased natural resource protection.
- 4) Other situations as determined by the state conservationist on a case-by-case basis.

A participant with CStP contract acres accepted into CRP, WRP, or GRP must request in writing to have those acres deleted from the CStP contract prior to entering into a contract for CRP, WRP, or GRP. The contract modification to remove acres accepted in CRP, WRP or GRP will occur as follows:

- a) Participant makes a written modification request late in the year, after the CStP activities have been completed. In this case, the modification will be completed as soon as practicable after the payment for the activities carried out in the previous fiscal year has been made, or
- b) Participant makes a written modification request during a current fiscal year prior to implementing scheduled CStP activities. In this case, a contract modification is completed prior to implementation of scheduled CStP activities to avoid an improper payment.

NOTE: A participant has 30 days or less as required to notify the NRCS if contracted acres were accepted into CRP, WRP, GRP, or another program that offers greater natural resource protection in order to allow those acres to be removed from the contract. Participants will not be subject to liquidated damages for enrolling CStP contract land in either CRP, WRP, or GRP.

All operational adjustments will begin by initiating a modification in Program Contracts System (ProTracts) which will allow access to the CMT. Operational adjustment modification types include:

Can be handled by the Area Office (AO)

- 1) Enhancement substitution—This will not permit an increase in the contract amount.
- 2) Add, edit, and/or delete a practice—This will not permit an increase in the contract amount.

Requires State Office Action

- 3) Resource inventory adjustment—This will not permit an increase in the contract amount.
- 4) Errors and omissions—Increases are permitted with STC and national headquarters (NHQ) approval, only.
- 5) Appeal—Used only for NAD appeal decisions and must have STC and NHQ approval.

Any operational adjustments made to a contract (including removing acres from the stewardship program contract to be enrolled in CRP, WRP, GRP, or other federal or state programs) will require an evaluation that CStP requirements continue to be met after operational adjustments have been made. The following CStP requirements need to continue to be met after making operational adjustments, which includes reducing acreage under contract:

- Ranking score above the ranking pool funding threshold, specific to each ranking period
- Stewardship threshold requirement met as determined by the CMT
- Installing an additional conservation activity to earn annual payments
- Installing at least one additional enhancement or enhancement bundle in the first year of the contract
- Maintaining the level of conservation performance identified at the time of contract obligation, which includes both the existing and additional conservation performance levels

NOTE: If any the aforementioned requirements are no longer met, then the entire contract will be in potential contract violation and may result in termination. For situations determined to be beyond the control of the participant, the participants would be provided an opportunity to add new activities consistent with program policies to meet the above requirements

Contract Administrative Change Modifications

Contract administrative changes are performed to keep administrative aspects of conservation stewardship contracts current but do not impact conservation performance levels and may include:

- Changing contract information, such as adding a participant or adjusting participant(s) contract shares
- Adding/editing a vendor code to/of an existing participant
- Changing field numbers
- Removing a minimum annual contract payment

These changes do not require program manager approval, but some such as adding participants or changing contract share may require second level approval by Financial Management (FNM). Then any changes should be submitted via electronic contracts system (eContracts).

Land Transfer Modifications

A land transfer occurs when a contract participant (i.e., transferor) loses control (voluntarily or involuntarily) of the acreage to another potential participant (i.e., transferee) in whole or in part.

Contracts assumed in their entirety in accordance with Title 440-CPM, Part 512, Subpart F, Section 512.54D, may have the transferee added through a modification using the following steps:

- 1) To initiate a modification, select "Land Transfer" as the primary reason, and view "Participant Information."
- 2) Select "Add Participant" and mark the participant as both a transferee and as the decision maker with appropriate shares, adding all the new transferees to the contract. Reduce the previous owner shares to zero.
- 3) The transferee must meet all the eligibility criteria for the modification to be approved.
- 4) Submit the modification for approval and obtain the participants' signatures on Form NRCS-CPA-152, "Conservation Program Contract Transfer Agreement" (transferee and transferor) and Form NRCS-CPA-1156, "Revision of Plan/Schedule of Operations or Modification of a Contract" (transferee only).
- 5) Provide and obtain transferee signature on original hardcopy contract appendix.
- 6) Modification change must be forwarded to the SO for second level review.
- 7) After receiving notification of completion of second level review, modification may be approved by the NRCS approving official.
- 8) The original obligating vendor record cannot be deleted; the previous owner of the contract remains as a participant on the contract with zero shares.

Partial contract assumption occurs when only part of the land under contract is transferred and the transferee agrees to assume the obligation for the acres removed from the transferor's contract. Participants are required to notify NRCS within 60 days of the transfer of interest to an eligible transferee. Take the following steps for partial land transfers:

- 1) Initiate a land transfer modification for the original contract and delete the transferred items from the existing contract, stating clearly in the “Basis for Modification” text box the explanation of the land transfer circumstances.
- 2) Complete applicant information and select transferee. If the land is being transferred to separate and distinct transferees for separate contracts, separate applications must be entered. Also, initiate a new application(s) for the transferred acres. Complete all application information as you would for any application.
- 3) Assistant state conservationist for field operations (ASTC-FO) shall set application status to “Approved” when transferee is determined eligible for the contract transfer. This step is essential to be able to select the transferees on Form NRCS-CPA-152 of the transferor contract.
- 4) Obtain transferee decision-maker signatures on the Form NRCS-CPA-152, Conservation Program Contract Transfer Agreement, generated from the transferor contract modification and obtain signatures on original copy of the applicable appendix. If there are multiple contracts resulting from the transfer, each transferee signs a separate Form NRCS-CPA-152 with the transferor for the land they assume.
- 5) Complete the “Applicant Signed” information, using the date from Form NRCS-CPA-152 since no Form NRCS-CPA-1202, “Conservation Program Contract,” is generated for a land transfer
- 6) Forward to FNM for second level review.
- 7) Upon notification from FNM, the ASTC-FO may sign the contract

If transferor retains any portion of the contract, follow normal business process to complete Form NRCS-CPA-1156, “Revision of Plan/Schedule of Operations or Modification of a Contract,” and obtain their signatures.

The following ProTracts application data entry steps are unique to partial contract assumptions:

- Application date will allow entry of the original application date. Contract end date needs to be the same as the existing contract, including any approved modifications to extend the completion date.
- Select the appropriate FY in which the contract was originally obligated.

Modifications requiring STC concurrence:

Field offices (FOs) will upload modification packets into eContracts using the Contract Modification–Noncompliance–153 option under the destination folder. The FO will ensure the following documents have been uploaded and will email their ASTC-FO and area resource staff when completed.

- Form NRCS–CPA–1200, Conservation Programs Application
- Form NRCS–CPA–1202 (Appendix)
- Form NRCS–CPA–1155, Conservation Plan Schedule of Operations
- Form NRCS–CPA–1156, Revision of Plan/Schedule of Operations or Modification of a Contract

- Form NRCS-153, Agreement Covering Non-Compliance with Provisions of Contract
- Signature authority, if applicable
- Participant Eligibility

The ASTC-FO will review the submitted documentation, sign the appropriate forms, and then use the notification button in eContracts to forward for STC approval or denial.

Modifications requiring NHQ concurrence:

When submitting modifications for errors and omissions, or appeals, the following steps are required:

FOs will upload modification packets into eContracts using the Contract Modification–Noncompliance–153 option under the destination folder. The FO will ensure the following documents have been uploaded and notify via email their ASTC-FO and area resource staff when completed.

- Form NRCS–CPA–1200, Conservation Programs Application
- Form NRCS–CPA–1202 (Appendix)
- Form NRCS–CPA–1155, Conservation Plan Schedule of Operations
- Form NRCS–CPA–1156, Revision of Plan/Schedule of Operations or Modification of a Contract
- Form NRCS-CPA-153, Agreement Covering Non-Compliance with Provisions of Contract
- Signature authority, if applicable
- Participant eligibility

The ASTC-FO will review the submitted documentation, sign the appropriate forms, and then attach the “template for increased obligation” justifying the reason for the increased obligation amount. All documents will be uploaded to eContracts.

The AO will notify the SO of the uploaded files using the eContracts notification option, Form NRCS-CPA-153. Programs Staff will forward to FNM for review before sending to NHQ.

After approval from NHQ, the signed form will be uploaded into eContracts with an email notification sent to the ASTC–FO and area resource staff that they may proceed with approval of the modification.

Contact: Forward questions through established channels to Joní Y. Franklin, Resource Conservationist, at (785) 823-4556 or joni.franklin@ks.usda.gov

(Signed)

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State Conservationist