



CIRCULAR 440-19-1 – Financial Assistance Programs

Title 440, Conservation Programs Manual
Part 512 (Subparts B, C, F, and G), Part 507 (Subpart M)

SUBJECT: PGM – Updates to NRCS financial assistance program policies.

Purpose. To communicate policy changes related to control of land, signature authority for entities, payments for practices that are part of a conservation system also referred to as “dependent practices,” and payments when a participant has died.

Effective Date. December 20, 2018

Background. Through the agency wide effort to identify ways to streamline and improve program delivery and customer service, NRCS identified specific areas of existing contracting and program policies that can be improved immediately. The four areas addressed in this circular are control of land policy, signature authority for legal entities, dependent practices, and payments when a participant has died.

Existing policy requires that program participants self-certify control of the land for the contract period when they submit a program application. Through an annual administrative review, a random 5 percent of contract participants must demonstrate that they have control of contracted land for the entire contract period. Current policy is more restrictive than current and anticipated statutory requirements. This has resulted in applicants or NRCS excluding otherwise eligible land from enrollment, NRCS terminating contracts, and auditors identifying deficiencies due to insufficient documentation.

Similarly, auditors have found that participant case files are missing signed documents identifying entity members with signature authority (forms CCC-901 or CCC-902) for the year of contract obligation. Additionally, several States have interpreted existing “payments not authorized” policy to include delaying payments for certified practices until the participant has completed all practices that make up a conservation system. NRCS does not have authority to withhold payment to participants who have completed practices in accordance with NRCS standards and specifications as certified by NRCS. Finally, current policy addressing payments when a participant has died conflicts with existing financial management guidance. Payments that may be considered proper through contract management policy have been deemed improper and subject to collection through financial management.

Policy.

Control of Land – The following policies have been amended to remove the requirement that an applicant/participant demonstrate control of land for the life of the contract at the time of enrollment. Applicants will continue to self-certify control of land on the NRCS-CPA-1200 application form. National policy now requires verification of land control at the time of enrollment and does not require the applicant establish, at such time, that they have documented control “for the life of the contract.” Instead, the applicant, if enrolled in the program, will need to establish control at the time of enrollment, and consistent with their responsibilities under the contract, NRCS will verify that the participant continues to maintain control during annual contract reviews and prior to approval of any payments. The changes below extend to any similar references in the specific program manuals.

Part 512, Subpart C, “Application for Assistance”:

Section 512.22A(1)

Control of Land Requirements.—A contract may be entered into with one or more participants having control of a land unit for the contract period. The word “control” means possession of the land by ownership, written lease, or other legal agreement. The participants will self-

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certify control of the land unit and relationship (owner, operator, or other tenant) on Form NRCS-CPA-1200, "Conservation Program Application," at the time of application. If the applicant is a tenant, the applicant must be able to provide NRCS with evidence of control upon request. NRCS will review and verify self-certifications in the year of fund obligation, as directed in Section 512.55, "Contract Reviews."

Part 512, Subpart F, "Contract Administration":

Section 512.55C(1) (Contract Reviews – Elements to be Reviewed – Elements that will be annually reviewed with CPC participants include the following)

(x) Confirmation that participant still controls all land under contract

Note: This confirmation does not require that NRCS retain copies of documentation reviewed in the case file; however, States will document what information they reviewed using assistance notes, Form NRCS-CPA-13, or the contract review checklist.

Section 512.55D(1) (Contract Reviews – Annual Administrative Review of Certifications)

(iv) Having control of the land at the time of enrollment.

Section 512.55D(3) (Contract Reviews – Annual Administrative Review of Certifications)

Note: States do not need to send the "Control of Land Administrative Review" letter to participants when they determine FSA records are sufficient to confirm participant's control of land at the time of enrollment. States will document this in the assistance notes.

Figure 512-F4, "Control of Land" (Contract Reviews – Annual Administrative Review of Certifications)

The word "control" means possession of the land by ownership, written lease, or other legal agreement. When available, FSA records, such as the Producer Farm Data Report, may be used to verify the participant's interest in the land (owner, operator, or other tenant). In the absence of FSA records, other reliable documentation such as survey maps, tax parcel data, official land use maps, etc., may be used to verify control of land. **Where the specific program regulation allows, STCs may waive this requirement for Tribal land and other unique cases in which a written lease is not customarily used.**

Part 512, Subpart J, "Exhibits"

The exhibit in attachment A replaces exhibit in section 512.99.

Part 507, Subpart M, "Exhibits"

Section 507.131 CSP Preobligation Checklist

8. Participant self-certified control of land on the NRCS-CPA-1200.

Signature Authority for Legal Entities – The following policies have been amended to remove the requirement that "All self-certifications of signature authority for legal entities are subject to verification by supporting documents," and adds clarification on FSA's role in entering and maintaining applicable entity signature authority documents in the FSA Business File.

Part 512, Subpart C, "Application for Assistance":

Section 512.21B, "Signatory Verification for Joint Operations and Legal Entities"

(iii) Self-certification for members of businesses and legal entities operating with an employer identification number (EIN), as indicated on Form CCC-902, "Farm Operating Plan, for an Entity 2009 and Subsequent Program Years," or Form CCC-901, "Member's Information 2009 and Subsequent Years," or equivalent successor forms as applicable for reporting years, as documented and recorded in the electronic FSA Subsidiary Business File. Only members selected on these forms will be considered authorized to sign for the business or legal entity. If they request that an individual other than an authorized member be granted authority to act as an attorney-in-fact on their behalf, they may grant this authority by executing a Form FSA-211, "Power of Attorney."

Note: Form CCC-901 or CCC-902, or equivalent successor forms as applicable for reporting years, only document signature authority for legal entities. FSA maintains electronic copies of these forms in the Business File database which roll over each year unless the entity requests a change to the form. These electronic records are not signed; however, their presence in the Business File indicates that FSA received a signed copy when the entity originally filed or updated the form. NRCS does not need to obtain a signed copy of these forms. By definition, joint operations and "informal joint ventures" are not legal entities and no such records exist.



Dependent Practices – The following policies have been amended to clarify planning, certification, and payment of practices or activities that make up a conservation system. If NRCS certifies a conservation practice or activity as complete, States should approve payments as soon as practicable in accordance with specific program policies.

Part 512, Subpart B, "Conservation Plan Schedule of Operation":

Section 512.11C

C. Planning Conservation Practices or Activities

Consistent with Title 180, General Manual, Part 409, "Conservation Planning Policy," conservation practices and activities must be planned, applied, and maintained in accordance with the approved practice standards, specifications, or enhancement activity sheet and supplements on file in the FOTG or, in the case of an approved waiver, meet the requirements approved by the authorized NRCS official. Additionally, planners must establish a realistic schedule for implementation of practices or activities that are part of a system to allow for timely certification regardless of whether the participant has fully implemented the entire system.

Part 512, Subpart G, "Conservation Program Payments":

Sections 512.65A(1) and (2) (Payments Not Authorized)

- (1) Any implementation that is less than a complete practice or activity
Note: This does not mean a complete system. Refer to Section 512.11C, "Planning Conservation Practices and Activities."
- (2) A practice or activity that failed to meet NRCS standards and specifications and for which a financial assistance payment was denied
Note: The participants must be informed in writing of the actions required to correct the deficiencies (see Section 512.55, "Contract Reviews"). Form NRCS-CPA-153, "Agreement Covering Non-Compliance with Provisions of Contract," may be used for this purpose.

Payments When a Participant Has Died – The section of policy identified below has been removed. Submit questions related to deceased participants and/or deceased entity members to the Financial Assistance Program Division.

Part 512, Subpart G, "Conservation Program Payments":

Section 512.60I, "Payments When a Participant Has Died" – Removed.

Filing Instructions. This circular is to be printed in hardcopy and retained in local files until the applicable manuals are updated to include this information.

Attachment A