

## Part 530 – Working Lands Conservation Programs Manual

### Subpart G – Modifications

#### 530.60 Contract Modifications

##### A. General

- (1) This subpart provides policy related to contract modifications applicable to all programs. Refer to the applicable program-specific subpart and business tools guides for additional guidance. Subpart O, Exhibit 530.143K, “Business Tools Quick Reference,” of this manual provides the list of applicable business tools.
- (2) A contract modification changes an existing contract but retains the overall purpose and original intent. Changes to a contract must be consistent with the program purpose and may be necessary as a result of conservation practice or activity design changes, management changes, land transfers, or other operational changes that would otherwise interfere with achieving the purposes of the program.
- (3) Field offices should work with a participant to modify contracts as needed prior to the participant incurring a contract violation.
- (4) A concise, but complete summary of the changes made when modifying or revising the contract must be explained in the modification basis section of Form NRCS-CPA-1156, “Revision of Plan/Schedule of Operations or Modification of Contract.”
- (5) The NRCS designated approving official must approve the modification before a participant begins work related to the subject of the modification, except as allowed under section 530.61 below. The effective date of a contract modification is the date it is electronically signed by the NRCS approving official.
- (6) When completing a modification, planners do not need to re-rank the contract. However, States must continue to follow applicable policy in determining whether a modification is appropriate.

##### B. Acceptable and Unacceptable Contract Modifications

- (1) Contracts allow participants to address identified resource concerns through the implementation of conservation practices or activities in a cost-effective manner. NRCS may approve contract modifications when the modification is within the objectives of the original contract. This determination is based upon three closely related considerations, including whether the original need for the contract continues, the Agency purpose for the contract remains the same, and the modified contract has the same objectives as the original contract. Examples of acceptable modifications include, but are not limited to—
  - (i) Extending the contract period within the program regulatory contract length shown in the applicable program-specific subparts of this manual if it is mutually agreed to by the participant and NRCS.
  - (ii) Correcting an error to accomplish the objectives of the original contract.
  - (iii) Adjusting the schedule of operations due to operational or design changes.
  - (iv) Removing land no longer under the control of the participant, provided that the original objectives and minimum program requirements continue to be met.
- (2) NRCS may not approve a contract modification if the modification is not within the objectives of the original contract as described above. Unacceptable modifications are outside of the original objectives of the contract if they add land, substantially change contract requirements, or if they change or add resource concerns that are not necessary to

meet the original objectives of the contract. Examples of unacceptable modifications include, but are not limited to—

- (i) Deleting contract items for reasons other than as allowed by policy in section 530.60D(2) below, or repeatedly rescheduling contract items to avoid a contract violation.

**Note:** Rescheduling contract items to avoid loss of payments due to violation of highly erodible land conservation (HELC) and wetland conservation (WC) compliance provisions is unacceptable. Refer to subpart I, “Contract Violations,” of this manual for additional guidance.

- (ii) Changing payment share distribution to avoid payment limitations.
- (iii) Changing the cost list or payment schedule scenario associated with a contract item to the current fiscal year’s cost list or payment schedule unless authorized by program-specific requirements.
- (iv) Approving multiple minor modifications to avoid the review process for modifications requiring NRCS approving official’s signature. Refer to section 530.60C, “Minor and Major Modifications,” below.
- (v) Adding newly acquired or eligible land to a contract. This includes adding transferred acres to an existing contract. In order to maintain the contract’s fund integrity, transferred acres and conservation practices or activities that need to be implemented on those acres must be maintained in a separate contract. Refer to section 530.60D(4)(ii) below for transfer of land guidance.

#### C. Minor and Major Modifications

- (1) Minor Modifications.—NRCS does not require the participant’s signature on Form NRCS-CPA-1156 when the change does not affect the participant’s responsibilities under the contract. There are two types of minor contract modifications:
  - (i) Administrative modifications that do not change the obligation amount. Modifications of this nature are in accordance with the planned objectives of the contract and do not change the participant’s responsibility. This includes, but is not limited to, changes to livestock or crop type and bank account information.
  - (ii) Minor changes that increase the current obligation by \$1,000 or less per contract item. Minor modifications will be recorded in the applicable business tools, noted in the conservation assistance notes, and may be reflected on Form NRCS-CPA-1245, “Practice Approval and Payment Application,” for changes made at the time of payment.
- (2) Major Modifications:
  - (i) Major contract modifications are defined as changes made to a contract that change the participant responsibilities or that increase the current obligation by more than \$1,000 per contract item.
  - (ii) Major modifications require the signatures of the participant and an NRCS approving official on form NRCS-CPA-1156.
  - (iii) Examples of major modifications include, but are not limited to, rescheduling a contract item, adding or deleting a contract item, removing acres no longer under the participant’s control, transferring land under contract, correcting an error or omission that changes the responsibilities of the participant, extending the contract period, and changing payment share distributions.

**Note:** Refer to subpart I, section 530.82B of this manual for guidance on contracts with items one year behind schedule.

#### D. Modification Reasons

- (1) Adding a Contract Item

- (i) A new contract item may be added to substitute a conservation practice or activity when the originally scheduled item is infeasible in order to address the original resource concerns or maintain performance levels as determined at the time of obligation.
  - (ii) A new contract item may be added to correct an error made at the time of obligation.
  - (iii) A new contract item may be added to authorize the participants to use the services of a technical service provider (TSP) prior to beginning any work. Refer to subpart E, section 530.40C of this manual for additional guidance related to using TSPs.
- (2) Deleting a Contract Item
- (i) Contract items may be deleted for reasons that are not averse to the Government's interest and the conservation objectives.
  - (ii) Contract items may be deleted if the conservation practice or activity is not technically feasible or necessary to address the resource concern or there is no substitute conservation practice or activity that is feasible.
- (3) Adding or Removing Land
- (i) Under limited circumstances, adding land to a contract may be authorized if needed to correct an error or to otherwise accomplish the objectives of the original contract.
  - (ii) If the participant loses control of some of the land in the contract, the land lost, and associated conservation practices or activities must be removed from the contract unless there is an eligible transferee willing to assume the contract responsibilities for such acres. Refer to the following section of this subpart for land transfer guidance.
  - (iii) Loss of control includes changes in a participant's ownership structure or corporate form that results in a change in the tax identification number or other unique identifier. In this case, participants must comply with the notice and transfer provisions included in this section.

**Note:** If the participant's tax identification number has not changed, then no change has occurred in the nature of the participant's interest in the acreage under the contract including control of the land.

- (4) Land Transfers
- (i) Land transfers are permitted when all parties agree to the transfer terms. If the participant loses control of all or part of a land unit under contract, one or more eligible transferees may assume the responsibilities of the contract with respect to the lost acreage. Refer to section 530.62E below for documentation requirements.
  - (ii) There are two types of land transfers—entire or partial contract assumption.
    - For entire contract assumptions the existing contract number and period of performance will not change.
    - For partial contract assumption the description of the acreage transferred and all conservation practices or activities to be carried out by the transferee must be included in a new application and contract. Also, the transferee is required to maintain all conservation practices or activities previously installed on the transferred land.
- Note:** A new contract will be created for the remaining years of the original contract.
- Note:** The transferee may change the scheduled dates for the assumed conservation practices or activities in accordance with program-specific requirements.
- Note:** When NRCS approves a contract transfer, the transferee accepts all rights and responsibilities, including the right to payment.
- (iii) Notice and Transfer Provisions
    - The participant must notify NRCS within the time specified in their contract appendix of any transfer of the participant's interest in the land under the contract

and identify a potential transferee. If the participant notifies the Farm Service Agency (FSA) of the transfer of interest, NRCS may accept this as timely notification if it is received by FSA within the timeframe specified in the contract appendix. If the participant does not identify a transferee when they notify FSA, NRCS must give them an opportunity to promptly identify a transferee.

- NRCS requires written notice such as email, formal letter, FSA records, etc., or NRCS must document any verbal notification in the conservation assistance notes.
- (iv) If the participant fails to notify NRCS of the loss of control of land within the required timeframe, refer to subpart I, “Contract Violations,” of this manual.
- (v) NRCS will follow up with the transferee as designated by the participant to make eligibility determinations. The transferee must meet eligibility requirements for the fiscal year the transfer is approved and must meet program-specific payment limitation requirements to be a program participant. If the transferee is ineligible at the time of the transfer request, NRCS will provide written notice to the transferee allowing up to 30 calendar days to file the necessary eligibility forms. Refer to subpart O, exhibit 530.141C, “Intent to Proceed Letter,” and exhibit 530.142E, “Conservation Program Application Checklist,” of this manual.
- (vi) The transferee is not a program participant until NRCS approves the transfer. Therefore, conservation practices or activities completed before contract transfer approval by NRCS are not eligible for program payment unless the work was completed by the estate or authorized representative of a deceased participant as stated in 7 CFR Part 1400 and subpart F, section 530.52G, “Payments to Deceased and Incapacitated Participants,” of this manual.
- (vii) All terms and conditions of the contract appendix signed at the time of original obligation continue to apply for successors in interest to all contracts. The date of succession to the contract determines the program year to be listed on the applicable adjusted gross income (AGI) certification form. The AGI form must be filed for the transferee in the year of the contract transfer. Use the AGI form applicable for the original year of contract obligation. Refer to subpart C, section 530.22C of this manual for additional guidance related to AGI.
- (viii) Deceased or Incapacitated Participants
  - Upon learning of a participant becoming deceased or incapacitated, the NRCS will notify the estate or other authorized representative of the existence of all active contracts. The NRCS will provide the estate or authorized representative the full amount of time (as specified in the contract appendix) to request that the contract be transferred to an eligible successor or canceled. Refer to subpart O, exhibit 530.141Q, “Deceased Participant Notification Letter” of this manual.
  - If the estate or authorized representative fails to notify NRCS of their intent within the timeframe provided, the NRCS will cancel the contract. Refer to subpart F, section 530.52G, “Payments to Deceased and Incapacitated Participants” of this manual regarding payment eligibility.

### **530.61 Contract Increases**

A. Modifications that increase obligations by more than \$1,000 per contract item require a two-part review. The NRCS employee processing the obligation change is responsible for making the determination that the change is within the objectives of the original contract. This information is used by the State designated second-level obligation reviewer to ensure that the correct funding year is used, especially when annual year or limited-use funds are to be used.

B. NRCS may approve an obligation increase after the participant starts or completes a conservation practice or activity already in the contract when—

- (1) The additional extent of the same conservation practice or activity was unknown at the time of contracting, or
- (2) A new scenario within the same conservation practice or activity is needed to address the original resource concern.

**Note:** It is best to avoid this situation by making necessary modifications when the need becomes evident prior to starting a conservation practice or activity. However, the extent of certain conservation practices or activities such as a water well can be difficult to estimate in advance and may require a late modification. If late approval becomes necessary, States must follow all requirements for a minor modification, major modification, or significant increase, as applicable. The approving official must carefully consider the validity of a late-processed modification.

C. Significant increases in contract obligations must be monitored to ensure the fairness of the basis for which the original contract was funded and otherwise to comply with restrictions on the use of Federal funds. Contract modifications that exceed the lesser of 20 percent of the original obligation or \$10,000 require the approval of the State conservationist or designee.

### 530.62 Documentation Requirements

A. Approved modifications are documented on Form NRCS-CPA-1156 and Form NRCS-CPA-152, “Conservation Program Contract Transfer Agreement,” depending on the type of changes made. The justification for modifying the contract must be clearly documented in the applicable business tool.

B. Participant signature on the NRCS-CPA-1156 must be consistent with signatures on the Form NRCS-CPA-1202, “Conservation Program Contract,” and NRCS-CPA-152.

C. NRCS will maintain two copies of the Form NRCS-CPA-1156, one with the participant’s signature and one with the NRCS approving official signature indicating the date of obligation in the contract case file per subpart E, section 530.43, “Contract Requirements,” of this manual. Participants will not sign this duplicate copy of the form. When NRCS approves a transfer agreement, the new participant must be provided with a copy of all contract documents.

D. Certain contract changes require supporting documentation prior to NRCS approving the modification. They are—

- (1) Contract Cancellation.—Requires participant’s written request.
- (2) Contract Termination.—Requires justification on Form NRCS-CPA-153, “Agreement Covering Non-Compliance with Provisions of Contract,” or other written notification from NRCS to the participant. Requires NRCS to provide formal documentation with appeal rights to the participant. Refer to subpart I, “Contract Violations,” of this manual for additional guidance.
- (3) Reapplication of Failed Conservation Treatment.—Requires a technical trip report documenting information required in section 530.64 below.
- (4) Reactivating a Canceled or Terminated Contract.—Requires written justification from NRCS. The final determination of an appeal or mediation may serve as written documentation.

**Note:** Contracts reactivated by modification require a subsequent modification to add new obligations.

**Note:** State conservationists must only reactivate contracts as agreed to through mediation or appeal when new information becomes available that changes the basis for the termination, to

implement a National Appeals Division (NAD) determination, or to implement equitable relief.

**Note:** States do not have authority to reactivate an expired contract.

- (5) Changing Participant Direct Deposit Information.—The participant must submit a signed Standard Form (SF)-1199A, “Direct Deposit Signup.”
- (6) Changing Contract Participants or Adjusting Participant Payment Shares.—Such changes must be documented on Form NRCS-CPA-152.

#### E. Documentation for Land Transfers

The transferee assumes all contract rights and obligations for the transferred acres by signing Form NRCS-CPA-152 and the original copy of the contract appendix which serve as the contract documents. Signatures from all participants receiving a payment share for the contract are required. Refer to subpart C, section 530.24, “Signature Authority,” of this manual for additional guidance.

F. For situations where FSA changes the participant name or business type, but the tax identification number remains the same, NRCS may document this change by completing Form NRCS-CPA-152 and have the participant sign as both transferor and transferee. This is not considered a change that requires new control of land verification.

### **530.63 Destruction of Conservation Practices or Activities under an Active Contract**

#### A. NRCS Approval

NRCS may approve a contract modification to allow a contract participant to destroy a completed conservation practice or activity during the contract term that is within the lifespan by replacing the destroyed conservation practice with an equivalent conservation practice or activity at the participant’s own cost. The participant must first file a written request to the State conservationist and receive written approval before altering a conservation practice or activity implemented or maintained with NRCS’s financial assistance.

#### B. Prior to approval the State conservationist must ensure that proposed actions will—

- (1) Achieve the contract conservation objectives.
- (2) Complete treatment actions without NRCS’s financial assistance within the term of the contract.

### **530.64 Reapplication of Failed Conservation Treatment**

#### Requirements

- (1) Active or completed contracts may be modified to provide for reapplication of a financially assisted conservation practice or activity that was completed and failed, provided all the following conditions are met:
  - (i) Failure was caused by circumstances beyond the participant’s control such as through natural disaster or vandalism, as documented in a technical trip report. Failure of a conservation practice or activity 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. Refer to subpart I, “Contract Violations,” of this manual for additional guidance.
  - (ii) The contract has not expired.

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- (iii) The payments do not exceed the applicable program payment limitations.
  - (iv) The participant meets all eligibility requirements.
  - (v) Program funding is available.
- (2) NRCS will add the reapplied conservation practices or activities to the contract through a modification.
- (i) For the 2008 Farm Bill and Agricultural Management Assistance Program (AMA) contracts, the new contract item uses the original fund source.
  - (ii) For the 2014 or 2018 Farm Bill contracts except AMA, NRCS may use the original or current year funds. AMA contracts will use the original fund source.
  - (iii) NRCS will reference the original contract item number in the “Basis for Modification” section of Form NRCS-CPA-1156.
- (3) NRCS requires a new contract for reapplication if the failed conservation practice or activity is part of an expired contract. Process an application and rank according to normal procedures. The program used to fund the new contract does not have to be the same as the original fund.
- (4) If equitable relief (ER) has been approved under 7 CFR Part 635, “Equitable Relief from Ineligibility,” for the reapplication of a failed conservation practice or activity and payment is approved for up to 100 percent of the cost, the reapplication may be funded:
- (i) Through a new special payment obligation if the contract has not expired; or
  - (ii) With a new contract using current-year funds. Refer to Title 440, Conservation Programs Manual, Part 509, “Equitable Relief from Ineligibility for Conservation.”
- Note:** Contact NHQ for assistance in implementing the ER determination.
- (5) The State conservationist or designee must approve these modifications and the State conservationist cannot delegate this authority below the State program manager level.