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Conservation Program Contracting (CPC)

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CPC Administration



- ▶ NRCS Home Page
 - Information for Employees
 - eDirectives System
- ▶ Manuals – Title 440 – Programs – Part 512



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http://prohome.nrcs.usda.gov/



USDA United States Department of Agriculture
Natural Resources Conservation Service

ProTracts

Program Contracts System

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Home

ProTracts Release Notes January 12, 2012

All Programs:

New message pop-up for Payment Approval which asks user to verify they are ready to approve the payment or cancel and make adjustments prior to sending to the financial system.

The cost list upload, following the check rules process, now displays a list of any inactive practice codes rather than just failing the upload without explanation of the errors.

CSP:

The CSP Appendix has now been translated into Spanish.

Minimum payments can now be removed in a non-CMT access modification where the participant did not meet the self certification criteria or the land was subject to the newly acquired land prohibitions in CPM 440 Part 508.93 for minimum payments.

Modification issues with proration of payment limitations for joint operations where the participant had contracts under both the interim final rule and higher rates under the final rule have been resolved.

After the Promote button for annual obligation has been used...

[More](#)

Links

- Conservation Practice Physical Effects
- EQIP Payment Limitation Lookup
- Practice Average Costs
- SCIMS
- SmarTech Training
- Subsidiary

Policy

- National Bulletins
- Manuals

I Want To...

- [Use ProTracts](#)
- [Use ProTracts Training Site](#)
- [Use Fund Manager](#)
- [Request a ProTracts Login](#)

Reference Materials

- [ProTracts & Programs Training Materials](#)
- [Join the ProTracts List Serve](#)
- [AERT Training Materials](#)
- [Eligibility References](#)

Release Information

- [Release Notes](#)

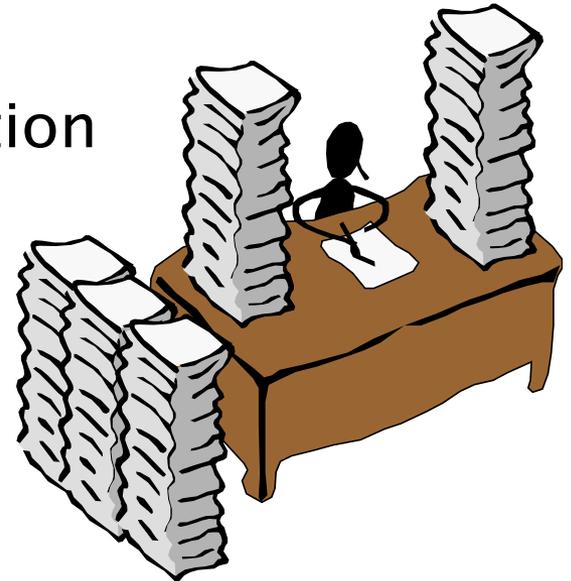
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Topics



- ▶ Policy Scope CPM Part 512
- ▶ Participant Responsibilities
- ▶ Special Provisions
- ▶ Signature Authority
- ▶ Filing Requirements
- ▶ Contract Period
- ▶ Modifications
- ▶ Practice documentation and certification
- ▶ Contract Reviews
- ▶ Partial and advance payments
- ▶ Cancelling and terminating
- ▶ Recovery of Funds
- ▶ Monitoring Tools in ProTracts



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Policy Scope



- ▶ 512.0
 - Contracts administered through ProTracts



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Participant Responsibilities



- ▶ 512.10
 - Communicate
- ▶ 512.20
 - Consent to Disclose Tax Info (CCC-931)
 - CPC Appendix
 - Special Provisions
- ▶ 512.40
 - Must comply with all provisions of the CPC Appendix

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Special Provisions



- 512.108
 - DUNS/CCR
 - Suspension/Debarment
 - Drug-Free Workplace
 - Growing Medical Marijuana
 - Federal Funds = Federal Law Applies
 - Not withstanding any non-conforming State Law
 - As per Federal Supreme Court – Marijuana is a Schedule 1 Controlled Substance
 - Others



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Signature Authority



▶ 512.21

- Not clear who? – then everyone must sign
- Informal joint ventures – everyone
- Spouses must have POA



▶ 512.55

- Confusion over Who must sign for “Control”
 - When a land unit in the contract is owned by multiple individuals, it only takes one of them to sign. When a contract contains multiple land units, each owned by a different individual, each one of them would need to sign (or have signature appropriately represented).
 - Control is not the same as permission to install structures

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Filing Requirements



▶ 512.43

◦ Records Disposition

• GM Title 120, Part 408, "Subpart D"

- Original, signed copies of all Cancelled, Disapproved or Ineligible applications are to be maintained for 3 years.
- Completed/Expired, Cancelled, or Terminated Program Contracts are to be maintained for 6 years and 3 months after final payment.
- Material such as conservation planning notes, schedules of operations, records of decisions, plan map, soils map, design or installation notes for engineering practices, etc., will be incorporated and maintained in cooperators individual case files.

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Filing Requirements



- Records relating to policy, procedure, and implementation of the conservation program such as ranking criteria, cost-lists, and general operating instructions for a given year are to be filed and maintained for 3 years past the termination or expiration of all contracts signed under this guidance (up to 13 years).
- A complete list of program applications should be printed from ProTracts by ranking period – before funding starts for each funding pool. (512.25)



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Contract Period



- ▶ 512.45
 - Do Not schedule items in the last year.
 - Do NOT delay practices to the last year of a contract
 - Any contract that is allowed to expire with open obligations is a direct violation of the EQIP Statute.
- ▶ 512.69
 - Nationally – Over use of Payments outside of ProTracts
 - Unauthorized Commitment is a “Conduct” not a “Performance” Issue.

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“Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.”



CODE OF ETHICS

Principles of Ethical Conduct for
Government Officers and Employees

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
4. An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting, activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
7. Employees shall not use public office for private gain.
8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.
13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

U.S. OFFICE OF GOVERNMENT ETHICS, WASHINGTON, D.C. 20005

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Modifications



- ▶ Request and Approval
- ▶ In-Scope *vs.* Out-of Scope
 - Policy Ref:
 - NRCS Responsibilities
 - 512.3 A
 - Modifications
 - 512.50 B (2)
 - 512.50 D



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Mod Request and Approval



▶ 512.51 B (2)

- The effective date of a mod is the date it is electronically signed by the NRCS approving official.
 - ✓ Prepare and Submit
Certification of Technical Adequacy
 - ✓ Participant Signs
Request and Concur
 - ✓ NRCS Approves
Accepted and Obligated



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Mod Request and Approval

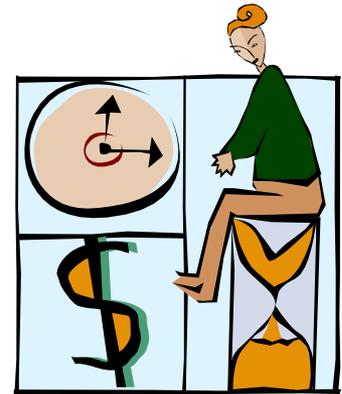


▶ 512.51 C

- Modification must be approved by NRCS before the project is started.
 - No After-the-fact “As-Built” mods
 - Funds available
 - In-Scope

▶ 512.65

- Payments Not Authorized
 - Any work requiring a mod that is performed before being obligated
 - Includes TSP items



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NRCS Responsibilities



- *FYI – It is not consistent with appropriations law to make new obligations with prior year annual funds unless it is instrumental to the success of the original obligation.*
- ▶ 512.3 A
 - (7) For modifications to existing contracts, the contracting and program person requesting obligation is responsible for making the determination that the change is within the scope of the original contract. This information is used by the second-level reviewers to ensure that the correct funding year is utilized.

Modifications



▶ 512.50 B (2)

- (v) Modifications that result in an obligation increase must be within the scope of the original contract and are generally categorized as a cost overrun. Contract modifications are generally within the scope if they are used to carry out the original intent of the contract on the original land, and the modifications will treat the original resource concern according to the ranking criteria on which contract approval was based.
- (vii) Modifications involving a change in scope are prohibited for all programs. Contract modifications are out of scope if they add new or additional practices or if they change or add resource concerns.

Modifications



▶ 512.50 D

- (i) Adding land to an existing contract is considered a change-in-scope action and is generally not permitted. This action will only be allowed when the addition of the land is necessary to accomplish the objectives of the original contract. (If, for example, a waterway was planned in the original contract, but final engineering design requires the waterway to be extended across a field that was not included in the original contract. The practice could not be installed to meet the original planned purpose without the additional land; therefore, adding land is permissible and within the contract scope). Document this on Form NRCS-CPA-1156, “Revision of Plan/Schedule of Operations or Modification of a Contract.”

Examples



▶ In-Scope

- Original intent, land, and resource concern
 - Cost overrun
 - Needing another 500 ft of pipe to reach the tank site.
 - Substitute practice
 - Planned a system of Terraces; Need a diversion on top to control foreign water.



Examples



▶ Out-of –Scope

- Adding/changing practice, land, or resource concern
 - Putting in another 500 ft pipeline and tank in adjacent pasture.
 - Adding a windbreak
- Circumventing Original Ranking
 - Substitute practice must be comparable
 - Signed-up, ranked and obligated as level terraces then modified to do land leveling
 - Sign-up/compete for another contract if needed
 - Do good planning up front

Changes in Operation



▶ Practice Substitution

- Existing Resource Concerns
 - Not future concerns
 - Enabling new production



▶ Deleting Practices

- Resource concern addressed by change in operation
 - A practice is **no longer necessary** to address the resource concern originally identified.



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Modifications to Delete Items



▶ Policy Ref:

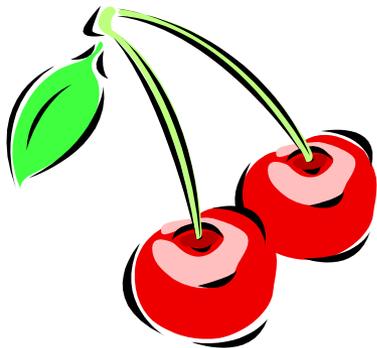
- CPM 512.50 D
- CPM 512.51 D
- CPM 512.67
- GM 450 Part 407
 - 407.2 Responsibilities
 - 407.11 Checking Completed Work
 - 407.12 Certifying Performance for Cost Sharing



Terms and Conditions



- ▶ Participant agrees to –
 - Establish, to NRCS Standards and Specifications, conservation practices and activities described in this contract as scheduled,...



CPM 512.50 D (iv)



- ▶ Adding or deleting a contract item.
 - To delete any contract item, there must be a valid reason not adverse to the Government's interest and conservation objectives. The designated conservationist must certify on Form NRCS-CPA-1156, "Revision of Plan/Schedule of Operations or Modification of a Contract," that the application ranking score was not adversely impacted by a deletion. Contract items may not be deleted simply to avoid a potential contract violation.



Example



- ▶ Planned Waste Storage Facility and CNMP
 - Completed the “pond” and still wants to plant the windbreak but wants to delete all other practices because decided to stop farming and build retirement home.



Contract items may be deleted if—



- ▶ The original conservation practice is not technically feasible to be installed.
 - If so, a substitute practice may be approved to address the original resource concern. When a practice of higher cost is requested as a substitute practice by the participant and the original practice is still feasible, NRCS will only provide cost-share assistance up to the amount of the least-cost option to treat the resource concerns. The original conservation practice may be deleted if no substitute practice is feasible.
- ▶ A practice is no longer necessary to address the resource concern originally identified.

Example



- ▶ Planned Waterway and gradient terraces
 - Substituted diversion and level terraces
 - Waterway no longer needed to address the resource concern



Example



- ▶ Planned Waste Storage Facility and CNMP with other structural practices on cropland
 - Core samples during site investigation for final design found bedrock
 - The original conservation practice is **not technically feasible** to be installed; **no substitute practice** is feasible.
 - OK to delete Waste Storage Facility if still wants to do the cropland practices

CPM 512.51 D



Deleting Practices or Funds

- Funds scheduled for financially assisted practices may be deleted from a contract by modification if a participant elects to carry out the practice under another conservation program or at his or her own expense **before installation is started**. If any part of a practice is begun before the contract is modified, all of that practice must be carried out under that conservation program. Conservation practices may not be deleted from the contract to avoid noncompliance with NRCS requirements or the terms and conditions of the contract.

Example



- ▶ Started construction on Waste Storage Facility
 - 1,500 cu yd of dirt work completed, needs another 10,000 cu yd and found out that the State has a cost share program that pays better than EQIP. Wants paid for the 1,500 cu yd and delete the remaining.
 - Partial payment not authorized
 - Cannot delete items to avoid Contract Violation

Example



- ▶ Farmer Joe bought a speed mover at an auction and now thinks he is a qualified dirt contractor.
 - He built his own terraces and after checking them out and sending him back to fill low spots and shape the back-slope about 6 times, he says never mind, I'll just not take cost share for them.
 - Cannot delete items to avoid contract violation.



Practice Documentation & Certification



- ▶ 512.65
 - Must meet Standards and Specifications
- ▶ GM Title 450 Part 407
 - Documentation, Certification and spot Checking
 - All practices installed with NRCS **technical** assistance must meet approved standards and specifications irrespective of the practice receiving program financial assistance.
 - Completed work is to be checked out and certified as meeting standards and specifications.
 - NRCS, TSP, or Contractor
 - Requirements for non-cost-shared practices are exactly the same as for cost-shared practices.

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Forms



- ▶ GM 120 part 403
 - 10 people rule
 - Certifications require specific language
 - must include a declaration of the criminal penalties for deliberate falsification
 - Cannot modify approved forms
 - Illegal to remove sections etc.
 - Must be 508 compliant
 - section 508 of the Rehabilitation Act of 1973,
 - Common “Home-made Forms”
 - Control of land
 - Consent for structural practices
 - Agree to O&M for waiver of cost recovery



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Contract Reviews



- ▶ Three strikes and you're out!
 - **Strike 1**
 - Delay once for one year – mod not required – just pen and ink notes
 - **Strike 2**
 - Follow-up with NRCS-CPA-13 – reschedule with a mod
 - **Strike 3**
 - Initiate NRCS-CPA-153 agreement to reasonable time not to exceed 1 year to complete



- Note: you can skip ahead at any time in the process

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Contract Reviews



- ▶ 512.96 – Annual Practice Reminder Letter
 - Required for recurring practices
 - Good to do for all contracts
 - Send first of calendar year



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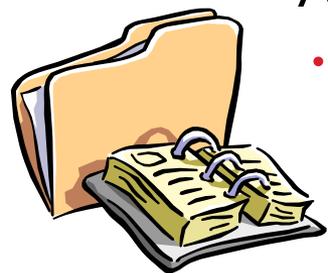
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Contract Reviews



▶ 512.55 B.

- “The designated conservationist must review contract implementation with the CPC participant annually and record findings in the ProTracts “Contract Review” module and in the CPC case file.”
- Annual = once a year. Year = twelve-month period.
- That means they must be done within the first 12 months. This is critical in order to meet the requirement at CPM 512.45 C to start a practice within the first 12 months or grant a waiver. If the review is not done until after it is too late for the practice to be started or to grant a waiver, you have a contract that needs to be terminated before the first review has ever been done.



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Contract Reviews



- ▶ Only one per Calendar Year in ProTracts
- ▶ “do not be afraid” of documentation in the case file.
- ▶ Always address status of any partial or advance payments.
- ▶ Delayed without a mod does not equal “on schedule”
 - **Must** have no prior-year incomplete items
 - *May* have current calendar year items planned

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Partial & Advance Payments



▶ CPM 512.67

- Must complete the practice as scheduled or will be considered in noncompliance and subject to repayment.
- Does not satisfy the requirements for StC to waive recovery as per 512.58
 - Avoid Partial Payments
 - Only Chief can wave non-completion due to extreme hardship
 - Advance Payments
 - Historically Underserved EQIP only
 - For immediate needs (30 days)
 - StC can extend (use the NRCS-CPA-153)
 - FM tracks and requires reports quarterly

Advance Payments



- ▶ 512.67
 - Out-of-Pocket Expenses
- ▶ Questionable Practices:
 - Mgt practices and CAPS have no up-front costs
 - Nutrient Mgt
 - Prescribed Grazing
 - Conservation Crop Rotation
 - Irrigation Water Mgt
 - Conservation Plan Supporting Transition to Organic



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Cancelling and Terminating



- ▶ 512.57
 - Cancellation for Hardship
 - Termination for Violation
- ▶ 512.58
 - LD only for terminations
 - Cost Recovery may be waived for either if justified
- ▶ 512.54
 - Losing Control is violation
 - Voluntary *vs.* involuntary

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Cost Recovery



▶ 512.58 D

◦ Refund of Financial Assistance

- Cancellation & Termination
- All or Part
 - \$1,000 or less *or*
 - Function independently *and*
 - Not affected by the violation or absence *and*
 - Agrees to operate and maintain what was installed



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Equitable Relief



- ▶ **Non-Compliance** with program *or* contract
 - NRCS misaction or misinformation
 - Practice failed because of bad design
 - made a good faith effort
 - neighbor plowed up cover crop
 - The contract *may* continue after the violation is cured.
 - Only applicable to covered farm bill programs
 - Not required to re-cost-share unless paying 100% or exceeding payment limitations
 - Chief must approve

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Improper Payments



- ▶ Often confused with Cost Recovery or ER
- ▶ Improper payments cannot be “waived” only dismissed if uncollectible
 - Dead and estate is closed
 - Out of country for more than 2 years with no expectation of returning
 - Bankruptcy Ruling – Not just filed for bankruptcy or reorganizing
- ▶ **512.68**
 - Debts less than \$25 may be compromised
 - Effective when published in eDirectives

NEW

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Improper Payments



*Definition from Improper Payments Information Act of 2002

- **IMPROPER PAYMENT.**—The term ‘improper payment’ —
 - means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) ... and
 - includes any payment to an ineligible recipient, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received

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Improper Payments



- ▶ *should not have been made*
 - funds go to the wrong recipient
- ▶ *incorrect amount*
 - \$1,000 instead of \$100
- ▶ *ineligible recipient*
 - False AGI certification
- ▶ *ineligible good or service*
 - paying for disallowed components or practices that we do not have standards or specifications for
- ▶ *duplicate payment*
 - WHIP and EQIP
- ▶ *good or service not received*
 - practice falsely certified and paid for that was never actually installed

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Monitoring Tools in ProTracts



- ▶ 512.3
 - (i) Contract Reviews
 - contracts on schedule; and
 - contracts not on schedule.
 - (ii) Contract Maintenance
 - Active contracts that expire in current calendar year; and
 - active contracts that are past the expiration date.
 - (iii) Pending Actions
 - Obligations;
 - modifications; and
 - payments; including advance payments.
 - (iv) Rejected Transactions.

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