

【Statute Title】 Measures for the Administration of Circulation of Rural Land Contracted Management Right [Effective]

【法规标题】农村土地承包经营权流转管理办法 [现行有效]

Promulgation date: 01-19-2005

Effective date: 03-01-2005

Department: Ministry of Agriculture

Subject: Agriculture

发布日期: 2005-01-19

生效日期: 2005-03-01

发布部门: 农业部

类别: 农业

Order of the Ministry of Agriculture of the People's Republic of China
(No.47)

The Measures for the Administration of Circulation of Rural Land Contracted Management Right, which were deliberated and adopted at the second executive meeting of the Ministry of Agriculture on January 7, 2005, are hereby promulgated and shall come into force as of March 1st, 2005.

Minister Du Qinglin

January 19, 2005

Measures for the Administration of Circulation of Rural Land Contracted Management Right

中华人民共和国农业部令
(第 47 号)

(相关资料: 法律 1 篇 部门规章 3 篇 地方法规 31 篇 裁判文书 33 篇 相关论文 7 篇)

《农村土地承包经营权流转管理办法》已于 2005 年 1 月 7 日经农业部第 2 次常务会议审议通过, 现予公布, 自 2005 年 3 月 1 日起施行。

部长: 杜青林

二 00 五年一月十九日

农村土地承包经营权流转管理办法

Chapter I General Provisions

第一章 总则

Article 1 The present Measures are formulated in accordance with the Law on the Contracting of Rural Land and the relevant provisions for the purpose of regulating the acts of circulation of rural land contracted management right, maintaining the lawful rights and interests of both parties of circulation, and promoting the development of agriculture and rural economy.

第一条 为规范农村土地承包经营权流转行为，维护流转双方当事人合法权益，促进农业和农村经济发展，根据《农村土地承包法》及有关规定制定本办法。

Article 2 The circulation of rural land contracted management right shall be on the basis of sticking to the system of household contracted management system of farmers and stabilizing the rural land contracting relationship, and follow the principle of fair negotiation, in accordance with law, free will and onerousness.

第二条 农村土地承包经营权流转应当在坚持农户家庭承包经营制度和稳定农村土地承包关系的基础上，遵循平等协商、依法、自愿、有偿的原则。

Article 3 The agriculture use of any contracted land shall not be altered due to the circulation of rural land contracted management right, the term of circulation may not exceed the remaining time limit of the contract term, and the lawful rights and interests of the interested parties and the rural collective economic organizations may not be impaired.

第三条 农村土地承包经营权流转不得改变承包土地的农业用途，流转期限不得超过承包期的剩余期限，不得损害利害关系人和农村集体经济组织的合法权益。

（相关资料：裁判文书 1 篇）

Article 4 The circulation of rural land contracted management right shall be normative and in order. The lawfully formed circulation relationship shall be subject to protection.

第四条 农村土地承包经营权流转应当规范有序。依法形成的流转关系应当受到保护。

Article 5 The competent administrative (or rural management) department of agriculture of the people's government at or above the county level shall be responsible for guiding the circulation of rural land contracted management right and the contract management within their own administrative regions in light of the functions as prescribed by the people's government at the corresponding level.

第五条 县级以上人民政府农业行政主管部门（或农村经营管理）部门依照同级人民政府规定的职责负责本行政区域内的农村土地承包经营权流转及合同管理的指导。

（相关资料：相关论文 1 篇）

Chapter II Parties to the Circulation

第二章 流转当事人

Article 6 A contractor shall have the right to determine of its/his own will whether the contracted land shall be circulated, and determine the objects and ways of circulation. No entity or individual may force or obstruct the contractor to circulate its/his contracted land according to law.

第六条 承包方有权依法自主决定承包土地是否流转、流转的对象和方式。任何单位和个人不得强迫或者阻碍承包方依法流转其承包土地。

（相关资料：裁判文书 4 篇）

Article 7 The income from the circulation of rural land contracted management right shall be owned by the contractor, no organization or individual may seize, retain or withhold it.

第七条 农村土地承包经营权流转收益归承包方所有，任何组织和个人不得侵占、截留、扣缴。

（相关资料：裁判文书 1 篇）

Article 8 In case a contractor circulates its/his contracted land by entrusting a contract-issuing party or an intermediary organization voluntarily, the contractor shall issue a power of attorney for land circulation. The power of attorney shall specify the entrusted matters, power and time limit, etc. with the signature or seal of the entrusting party.

No organization or individual may have any right to determine to circulate the contracted land of any farmer in any form without the written entrustment of the contractor.

第八条 承包方自愿委托发包方或中介组织流转其承包土地的，应当由承包方出具土地流转委托书。委托书应当载明委托的事项、权限和期限等，并有委托人的签名或盖章。

没有承包方的书面委托，任何组织和个人无权以任何方式决定流转农户的承包土地。

Article 9 The assignee of the circulation of rural land contracted management right may be the contracting farmer, or may be any other organization or individual that is allowed to undertake agricultural production and management according to the relevant laws and provisions. Under the same conditions, the member of the same collective economic organization shall have the priority.

The assignee shall have the agricultural management capacity.

第九条 农村土地承包经营权流转的受让方可以是承包农户，也可以是其他按有关法律及有关规定允许从事农业生产经营的组织和个人。在同等条件下，本集体经济组织成员享有优先权。

受让方应当具有农业经营能力。

Article 10 The ways, term and concrete conditions of the circulation of rural land contracted management right shall be determined by the two parties to the circulation through equal negotiation.

第十条 农村土地承包经营权流转方式、期限和具体条件，由流转双方平等协商确定。

Article 11 After a contractor has reached an intention for circulation with an assignee, if the circulation is made by way of subcontracting, leasing, interchanging or other ways, the contractor shall put that on archives to the contract-issuing party in time. If the circulation is made by way of transfer, the contractor shall file an application for transfer to the contract-issuing party beforehand.

第十一条 承包方与受让方达成流转意向后，以转包、出租、互换或者其他方式流转的，承包方应当及时向发包方备案；以转让方式流转的，应当事先向发包方提出转让申请。

（相关资料：裁判文书 2 篇）

Article 12 An assignee shall protect the land according to the provisions of the relevant laws and regulations, no assignee may alter the agriculture use of the circulated land.

第十二条 受让方应当依照有关法律、法规的规定保护土地，禁止改变流转土地的农业用途。

（相关资料：裁判文书 21 篇）

Article 13 An assignee shall win the consent of the former contractor when re-circulating the land which has been circulated by way of subcontracting or leasing.

第十三条 受让方将承包方以转包、出租方式流转的土地实行再流转，应当取得原承包方的同意。

（相关资料：裁判文书 22 篇）

Article 14 Where an assignee improves the throughput of any land due to input during the period of circulation, when the land circulation contract expires or does not expire and the contractor takes back the contracted land according to law, the assignee shall have the right to get corresponding compensation. The concrete measures for compensation may be stipulated in the land circulation contract or resolved through negotiation by the two parties.

第十四条 受让方在流转期间因投入而提高土地生产能力的，土地流转合同到期或者未到期由承包方依法收回承包土地时，受让方有权获得相应的补偿。具体补偿办法可以在土地流转合同中约定或双方通过协商解决。

Chapter III Ways of Circulation

第三章 流转方式

Article 15 The rural land contracted management right lawfully obtained by a contractor may be circulated by way of subcontracting, leasing, interchanging, transferring or other ways that comply with the provisions of relevant laws and state policies.

第十五条 承包方依法取得的农村土地承包经营权可以采取转包、出租、互换、转让或者其他符合有关法律和国家政策规定的方式流转。

（相关资料：裁判文书 1 篇）

Article 16 In case a contractor circulates part or all of the rural land contracted management right by way of subcontracting, leasing or contributing as a share according to law, the contracting relationship between the contractor and the contract-issuing party shall remain unchanged, and the right enjoyed and the obligations undertaken by both parties shall remain unchanged.

第十六条 承包方依法采取转包、出租、入股方式将农村土地承包经营权部分或者全部流转的，承包方与发包方的承包关系不变，双方享有的权利和承担的义务不变。

Article 17 In case the contractors of the same collective economic organization exchange the land contracted management rights of their own will, the contracting rights enjoyed and the obligations undertaken by both parties for the interchange of land shall also be exchanged

accordingly, the parties may require going through formalities for the alteration registration of the certificate of rural land contracted management right.

第十七条 同一集体经济组织的承包方之间自愿将土地承包经营权进行互换, 双方对互换土地原享有的承包权利和承担的义务也相应互换, 当事人可以要求办理农村土地承包经营权证变更登记手续。

(相关资料: 裁判文书 1 篇)

Article 18 In case a contractor circulates the rural land contracted management right by way of transfer, the parties may require going through formalities for altering, writing off or reissuing the certificate of rural land contracted management right in time upon the approval of the contract-issuing party.

第十八条 承包方采取转让方式流转农村土地承包经营权的, 经发包方同意后, 当事人可以要求及时办理农村土地承包经营权证变更、注销或重发手续。

(相关资料: 相关论文 1 篇)

Article 19 The contractors may develop cooperative agricultural production through contributing the contracted land as a share of their own will, but the land contributed shall be returned to the former contracting farmer at the dissolution of the share-holding cooperation.

第十九条 承包方之间可以自愿将承包土地入股发展农业合作生产, 但股份合作解散时入股土地应当退回原承包农户。

Article 20 The land contracted management right obtained by way of transfer and interchange may be circulated, after the land contracted management right has been obtained upon registration according to law, by taking such ways as subcontracting, leasing, interchanging, transferring or other ways complying with the provisions of laws and state policies.

第二十条 通过转让、互换方式取得的土地承包经营权经依法登记获得土地承包经营权证后, 可以依法采取转包、出租、互换、转让或者其他符合法律和国家政策规定的方式流转。

Chapter IV Circulation Contract

第四章 流转合同

Article 21 A contractor shall sign a written circulation contract with the assignee on the basis of agreement through negotiation when circulating rural land contracted management right.

The circulation contract of rural land contracted management right shall be in quadruplicate, each party of the circulation shall have one copy, the contract-issuing party and the department of rural land contracting management of the people's government of any village or town shall have one copy respectively for archival purpose.

In case the contractor transfers any land to another person for plowing as an agent for less than one year, he need not sign the written contract.

第二十一条 承包方流转农村土地承包经营权, 应当与受让方在协商一致的基础上签订书面流转合同。

农村土地承包经营权流转合同一式四份, 流转双方各执一份, 发包方和乡(镇)人民政

府农村土地承包管理部门各备案一份。

承包方将土地交由他人代耕不超过一年的，可以不签订书面合同。

（相关资料：相关论文 1 篇）

Article 22 In case a contractor entrusts any contract-issuing party or any intermediary service organization to circulate its/his contracted land, the circulation contract shall be signed by the contractor or the agent under its/his entrustment in written forms.

第二十二条 承包方委托发包方或者中介服务组织流转其承包土地的，流转合同应当由承包方或其书面委托的代理人签订。

Article 23 The circulation contract of rural land contracted management right shall cover the following contents in general:

1. The name and residence place of both parties;
2. The four boundaries of a piece of land, its location, area and quality grade;
3. The circulation term and the beginning and ending dates;
4. Ways of circulation;
5. Purpose of the use of the circulated land;
6. Rights and obligations of the two parties;
7. Circulation price and ways of payment;
8. The handling of the appurtenance of the land and the relevant facilities after the expiry of the circulation contract; and
9. Liabilities for breach of contract.

The text format of the circulation contract of rural land contracted management right shall be determined by the administrative department of agriculture of the people's government at the provincial level.

第二十三条 农村土地承包经营权流转合同一般包括以下内容：

- （一）双方当事人的姓名、住所；
- （二）流转土地的四至、座落、面积、质量等级；
- （三）流转的期限和起止日期；
- （四）流转方式；
- （五）流转土地的用途；
- （六）双方当事人的权利和义务；
- （七）流转价款及支付方式；
- （八）流转合同到期后地上附着物及相关设施的处理；
- （九）违约责任。

农村土地承包经营权流转合同文本格式由省级人民政府农业行政主管部门确定。

Article 24 The parties to the circulation of rural land contracted management right may apply for verification of a contract to the department of rural land contracting management of the people's government of any village or town.

The department of rural land contracting management of the people's government of any village or town may not force the parties to the circulation of land contracted management right to

accept verification of a contract.

第二十四条 农村土地承包经营权流转当事人可以向乡（镇）人民政府农村土地承包管理部门申请合同鉴证。

乡（镇）人民政府农村土地承包管理部门不得强迫土地承包经营权流转当事人接受鉴证。

Chapter V Circulation Administration

第五章 流转管理

Article 25 A contract-issuing party shall handle archival filing in time upon the request of the contractor for circulating contracted land by subcontracting, leasing, interchanging or by other ways, and report to the department of rural land contracting management of the people's government of the village or town.

In case a contractor transfers the contracted land, and the contract-issuing party agrees to such transfer, it/he shall report to the department of rural land contracting management of the people's government of the village or town in time, and cooperate in handling the relevant alteration formalities. If the contract-issuing party does not agree to the transfer, it/he shall explain the reasons to the contractor in writing within 7 days.

第二十五条 发包方对承包方提出的转包、出租、互换或者其他方式流转承包土地的要求，应当及时办理备案，并报告乡（镇）人民政府农村土地承包管理部门。

承包方转让承包土地，发包方同意转让的，应当及时向乡（镇）人民政府农村土地承包管理部门报告，并配合办理有关变更手续；发包方不同意转让的，应当于七日内向承包方书面说明理由。

Article 26 The department of rural land contracting management of the people's government of any village or town shall provide in time the circulation contract with uniform text format to the contractor that has reached the circulation intention, and give guidance to the signing of the contract.

第二十六条 乡（镇）人民政府农村土地承包管理部门应当及时向达成流转意向的承包方提供统一文本格式的流转合同，并指导签订。

Article 27 The department of rural land contracting management of the people's government of any village or town shall establish registries for the circulation of rural land contracted management right, and record the conditions for the circulation of rural land contracted management right accurately and timely. In case any contracted land is circulated by ways of subcontracting, leasing or other ways, the relevant registration shall be gone through in time. If the contracted land is circulated by way of transfer or interchange, the relevant formalities for the alteration of the relevant contracting contract and certificate of land contracted management right shall be handled in time.

第二十七条 乡（镇）人民政府农村土地承包管理部门应当建立农村土地承包经营权流转情况登记册，及时准确记载农村土地承包经营权流转情况。以转包、出租或者其他方式流转承包土地的，及时办理相关登记；以转让、互换方式流转承包土地的，及时办理有关承包合同和土地承包经营权证变更等手续。

Article 28 The department of rural land contracting management of the people's government of any village or town shall file the circulation contract of rural land contracted management right and the relevant documents, texts and materials and keep them properly.

第二十八条 乡（镇）人民政府农村土地承包管理部门应当对农村土地承包经营权流转合同及有关文件、文本、资料等进行归档并妥善保管。

Article 29 In case any land contracted management right is circulated by way of interchange or transfer, and the parties apply for going through circulation registration on the land contracted management right, the administrative department of agriculture (rural management) of the people's government at the county level shall accept it and handle it in accordance with the provisions of the Measures for the Administration of Certificate of Rural Land Contracted Management Right.

第二十九条 采取互换、转让方式流转土地承包经营权，当事人申请办理土地承包经营权流转登记的，县级人民政府农业行政（或农村经营管理）主管部门应当予以受理，并依照《农村土地承包经营权证管理办法》的规定办理。

Article 30 Any intermediary organization that undertakes the service of rural land contracted management right shall put itself on archives at the administrative department of agriculture (rural management) of the local people's government at or above the county level and accept their guidance, and provide circulation intermediary services according to laws and relevant provisions.

第三十条 从事农村土地承包经营权流转服务的中介组织应当向县级以上地方人民政府农业行政（或农村经营管理）主管部门备案并接受其指导，依照法律和有关规定提供流转中介服务。

（相关资料：地方法规 1 篇）

Article 31 The department of rural land contracting management of the people's government of any village or town shall correct in time the stipulations of both parties to the circulation that violate laws and regulations discovered by it during guiding the conclusion and verification of any circulation contract.

第三十一条 乡（镇）人民政府农村土地承包管理部门在指导流转合同签订或流转合同鉴证中，发现流转双方有违反法律法规的约定，要及时予以纠正。

Article 32 The administrative department of agriculture (rural management) of the local people's government at or above the county level shall strengthen guidance to the work of the department of rural land contracting management of the people's government of any village or town. The department of rural land contracting management of the people's government of any village or town shall carry out the work for the guidance and administration of circulation of rural land contracted management rights according to law and perform its duties properly.

第三十二条 县级以上地方人民政府农业行政（或农村经营管理）主管部门应当加强对乡（镇）人民政府农村土地承包管理部门工作的指导。乡（镇）人民政府农村土地承包管理部门应当依法开展农村土地承包经营权流转的指导和管理工作的，正确履行职责。

Article 33 In case there occurs any dispute or dissension in the circulation of any rural land contracted management right, the parties shall resolve it through negotiation according to law. If the parties cannot reach an agreement through negotiation, they may ask for conciliation by the village committee or the people's government of the village or town. If the parties are unwilling to negotiate with each other or cannot reach an agreement through conciliation, they may apply for arbitration to the rural land contracting arbitration institution, or may file a lawsuit to the people's court directly.

第三十三条 农村土地承包经营权流转发生争议或者纠纷，当事人应当依法协商解决。

当事人协商不成的，可以请求村民委员会、乡（镇）人民政府调解。

当事人不愿协商或者调解不成的，可以向农村土地承包仲裁机构申请仲裁，也可以直接向人民法院起诉。

（相关资料：裁判文书 1 篇）

Chapter VI Supplementary Provisions

第六章 附则

Article 34 In case anyone contracts barren mountains, barren ditches or barren hills, or desolate beaches and other rural land by ways of bid invitation, auction or open negotiation, and obtains the certificate of rural land contracted management right after lawful registration, he may circulate the land by ways of transfer, leasing, contributing as a share, mortgaging or by other means, the present Measures shall be referred to when the circulation administration is conducted.

第三十四条 通过招标、拍卖和公开协商等方式承包荒山、荒沟、荒丘、荒滩等农村土地，经依法登记取得农村土地承包经营权证的，可以采取转让、出租、入股、抵押或者其他方式流转，其流转管理参照本办法执行。

（相关资料：相关论文 1 篇）

Article 35 The "transfer" as mentioned in the present Measures shall mean that a contractor who has a stable non-agricultural profession or stable source of income, and upon the application of the contractor and with the consent of the contract-issuing party, transfers part or all of the land contracted management right to any other farmer who undertakes the management of agricultural production, and the farmer performs the corresponding rights and obligations of the land contracting contract. The former land contracting relationship shall be terminated automatically after the transfer, and the land contracted management right within the contracting period of the former contractor shall be lost partly or totally.

The "subcontract" shall mean that the contractor transfers part or all of the land contracted management right to any other farmer in the same collective economic organization within a

certain period to undertake agricultural production management. The former land contracting relationship shall remain unchanged after the subcontracting, and the former contractor shall continue to perform the rights and obligations as prescribed in the original land contracting contract. The party receiving the subcontract shall be responsible to the subcontractor according to the stipulated conditions. The case in which the contractor hands the land to another person to plow for less than one year shall be excluded.

The interchange shall mean that the contractors exchange the contracted land subject to the same collective economic organization and the corresponding land contracted management rights at the same time for the purpose of convenience for plowing or their respective needs.

The “contributing as a share” shall mean that the contractor that applies the method of family contracting contributes the land contracted management right as share right to undertake cooperative agricultural production and management jointly of their own will for the purpose of developing agricultural economy; and the contractor taking other contracting ways quantifies the land contracted management right as share right, and buys a share to form joint stock company or cooperatives to undertake agricultural production and management.

The “leasing” shall mean that the contractor leases part or all of the land contracted management right to others to undertake agricultural production and management within a period of time. The former land contracting relationship after leasing shall remain unchanged, the former contractor shall continue to perform the rights and obligations as prescribed by the former land contracting contract. The tenant shall be responsible to the contractor according to the conditions stipulated when leasing.

The “assignees” as mentioned in the present Measures shall include the party receiving the contract and the tenant, etc..

第三十五条 本办法所称转让是指承包方有稳定的非农职业或者有稳定的收入来源,经承包方申请和发包方同意,将部分或全部土地承包经营权让渡给其他从事农业生产经营的农户,由其履行相应土地承包合同的权利和义务。转让后原土地承包关系自行终止,原承包方承包期内的土地承包经营权部分或全部灭失。

转包是指承包方将部分或全部土地承包经营权以一定期限转给同一集体经济组织的其他农户从事农业生产经营。转包后原土地承包关系不变,原承包方继续履行原土地承包合同规定的权利和义务。接包方按转包时约定的条件对转包方负责。承包方将土地交他人代耕不足一年的除外。

互换是指承包方之间为方便耕作或者各自需要,对属于同一集体经济组织的承包地块进行交换,同时交换相应的土地承包经营权。

入股是指实行家庭承包方式的承包方之间为发展农业经济,将土地承包经营权作为股权,自愿联合从事农业合作生产经营;其他承包方式的承包方将土地承包经营权量化为股权,入股组成股份公司或者合作社等,从事农业生产经营。

出租是指承包方将部分或全部土地承包经营权以一定期限租赁给他人从事农业生产经营。出租后原土地承包关系不变,原承包方继续履行原土地承包合同规定的权利和义务。承租方按出租时约定的条件对承包方负责。

本办法所称受让方包括接包方、承租方等。

(相关资料: 裁判文书 1 篇 相关论文 1 篇)

Article 36 The present Measures shall come into force officially on March 1st, 2005.

第三十六条 本办法自 2005 年 3 月 1 日起正式施行。

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