



Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013

CONSERVATION PROGRAMS MANUAL (CPM)
440-PGM
Circular No. 8, Part 512, Conservation Program Contracting

December 3, 2008

SUBJECT: PGM – To Provide Guidance Regarding Documentation of Authority and Actions Needed for Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentives Program (WHIP), and Agricultural Management Assistance (AMA), Waivers to not Implement Practices within 12 Months of Contract Obligation

Purpose. This Circular provides guidance to the States to address Environmental Quality Incentives Program (EQIP), Wildlife Habitat Incentives Program (WHIP) and Agricultural Management Assistance (AMA) policy to document requests by program participants for waiver of the requirement to implement a practice within the first 12 months of contract obligation.

Effective Date. This Circular is effective upon receipt.

Background. Program policy requires that program participants implement a practice within the initial 12 months of the contract period. Waivers to delay implementation of a practice must be approved and documented according to policy. The open obligation review has revealed that some requests for this program waiver were not documented nor was policy followed to assure approval for waivers were properly delegated. This Circular provides explanation of the agency authority to grant this waiver, actions needed to document waiver requests for open obligation contracts being reviewed, and other actions that may be needed to meet policy and audit requirements. This Circular applies to program contracts administered through ProTracts.

Contract Waiver and Program Authority. The authority to allow and approve waiver of practice installation during the first year of the contract agreement is established in:

- **Prior to 2002 Farm Bill – 7CFR Section 1466.21(1997):** “Section 1466.2 Administration. Contract requirements. (c) The participant must apply a financially assisted practice within the first 12 months of signing a contract.”
- **Conservation Programs Manual, First Edition (1999) 440-V-CPM Amendment No. 1:** “Section 515.111(k) Waiver to Commencing a Practice.” This EQIP policy provided authority to grant a waiver for delay of starting a practice within the initial 12 month period of the contract. Waiver requests were made to the Farm Service Agency County Committee (COC) with concurrence from the NRCS Designated Conservationist.
- **After 2002 Farm Bill - 7CFR Section 1466 Final Rule (2003):** “Section 1466.21 Contract requirements. (c) The participant must start at least one financially assisted

practice within the first 12 months of signing a contract. If a participant, for reasons beyond their control, is unable to start a practice within the first year of the contract, they can request a waiver from the State Conservationist.”

- **Program Contract Appendix:** Program Appendix requirements and options for waiver.
 - 1997 – EQIP CCC-1200 Appendix: “To apply or commence a financially assisted practice within the first 12 months from the date of the contract executed by CCC.”
 - 1998-2002 – EQIP CCC-1200 Appendix: “To apply or commence a financially assisted practice within the first 12 months from the date of the contract executed by CCC. The participant may be granted a waiver to this requirement by the FSA county committee.”
 - 2003-2004 - EQIP CCC-1200 Appendix: “To apply or commence a financially assisted practice within the first 12 months from the date of the contract executed by NRCS. The participant may request, in writing, a waiver to this requirement from the NRCS State Conservationist.”
 - 2005 - EQIP CCC-1200 Appendix and beginning in 2006, the CPA-1202 Appendix for EQIP, WHIP and AMA: “Apply or commence a financially assisted practice within the first 12 months from the date this Contract is signed by NRCS. The Participant may request, in writing, a waiver of this requirement from the NRCS STC or designee for circumstances beyond the Participant’s control.

These documents provide substantial authority and historical policy that establish agency procedures to advise program participants how to request this waiver and for proper documentation in contract reviews and delegations of approval authority as appropriate.

Who can approve a waiver using this authority? For active contracts, State Conservationists are authorized to grant a waiver to delay the start of a practice in the first 12 months of the contract. Since the 2003 program year, an EQIP participant could request a waiver in writing. Beginning in the 2006 program year, WHIP and AMA participants could also request a waiver in writing. State Conservationists may delegate their authority to approve a waiver as clarified in recently issued National Bulletin 440-9-x, “Guidance for Documenting State Conservationist’s Delegation of Authority.”

Action Required for Contracts Missing Waiver Documentation:

(1) **Waiver currently requested/needed:** For open obligations (FY 08 Program Contract) where the participant has requested a waiver in writing to delay practice installation, follow current policy in 440-CPM, Part 515, Section 515.10(i)(xxii) for justification and modification per 440-CPM, Part 512, Section 512.50 (**Note:** the justification to approve a waiver may be related to NRCS inability to provide timely technical service). A sample waiver letter is attached to this Circular. If the participant is approved for a waiver to install

in year one, but intends to install the practice within one year of the original planned year, current policy requires a contract review be completed, but does not require a contract modification (440-CPM, Part 512, Subpart E, Section 512.40). If the practice is to be rescheduled more than two years after contract obligation, a contract review and modification to reschedule practices will be required.

(2) Waiver Not Needed Retroactively: If an active (not expired) contract is past the initial 12 month period and the participant has not installed a practice according to schedule, a waiver or documentation to retroactively approve a waiver is not required. NRCS shall complete a contract review to determine if the participant wishes to reschedule the practices. If after completing the contract review the participant agrees to continue the contract, then complete a modification to reschedule practices and/or extend the contract if needed, according to policy (440-CPM, Part 512, Subpart F, Section 512.50).

If the contract has expired, the agreement may not be re-activated.

Additional guidance on what constitutes commenced activities. During the open obligations review, questions were raised regarding what NRCS should use to determine if a participant has “commenced” practice installation. There is no regulation or policy which defines what constitutes “commenced” as cited in contract agreements. For purposes of this effort, this Circular establishes the definition of a commenced practice as: “Evidence of commitment of labor or incurred costs as provided by the participant.” This may include, but is not limited to construction activities. If NRCS determines this definition has been met, the participant is determined to have met contract requirements and is in compliance with the agreement. For practices that are commenced within the first 12 months of the contract period, a waiver is not required and NRCS shall document compliance during the annual contract review (440-CPM, Part 512, Subpart F, Section 512.55).

Contact. Questions regarding this Circular may be directed to Gregory Johnson, Acting Director, Financial Assistance Programs Division (FAPD) at 202-720-1845 or gregory.johnson@wdc.usda.gov.

/s/ Tony Kramer for

THOMAS W. CHRISTENSEN
Deputy Chief for Programs

Attachment – Example Letter

EXAMPLE LETTER

Waiver to approve delay of practice implementation within first 12 month of contract obligation

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

DATE

(Name and address of participant)

RE: EQIP Program Contract (Enter contract number)
Request for Delay of Scheduled Practice

Dear (Participant):

I have received your written request dated (<<enter date of the request>>) for consideration of a waiver to delay implementation of the first scheduled practice of the above cited EQIP program contract. I accept your justification that the practice cannot be implemented as scheduled, because of reasons or factors that are beyond your control and influence.

This notice provides approval of your waiver request contingent upon our understanding that the reasons cited for delay are consistent with program requirements; you are abiding with and not in violation of any other provisions of the contract agreement. This waiver does not provide any other relief other than to allow an exception to program requirements and the contract appendix for required implementation of a practice within the first 12 months of approval of the contract.

Contact your local NRCS Office if you have any questions and for further instructions for completion of a contract review and any needed modifications.

This waiver is not appealable as this is a matter of regulation, as set forth at [enter the correct regulatory citation]. If you disagree with the terms and conditions of this waiver, you may however, request a review of appealability from the applicable National Appeals Division Regional Office.

(The following addresses are provided for NRCS use. Select the NAD office applicable to your State for letter):

Eastern NAD Region	Southern NAD Region	Western NAD Region
USDA National Appeals Division Assistant Director Post Office Box 68806 Indianapolis, Indiana 46268-0806 Phone: 1-(800) 541-0457 Fax: (317) 875-9674	USDA National Appeals Division Assistant Director Post Office Box 1508 Cordova, Tennessee 38088 Phone: 1-(800) 552-5377 Fax: (901) 544-0363	USDA National Appeals Division Assistant Director 755 Parfet Street, Suite 494 Lakewood, Colorado 80215-5506 Phone: 1-(800) 541-0483 Fax: (303) 236-2820

Sincerely,

(Enter STC name)
State Conservationist

cc:
(Designated Conservationist)
(ASTC for Field Operations)