

440-Conservation Programs Manual

Subpart B – Responsibilities

NM515.21 Natural Resources Conservation Service Responsibilities

f State Offices

New Mexico State Conservationist will delegate authority to the Area Conservationists to fully implement EQIP responsibilities, including the ability to grant waivers outlined in the EQIP Program Manual. This includes ability to waive part or all cost recovery. Cost recovery includes both technical assistance (liquidated damages) and a refund of financial assistance (cost-share obligations).

New Mexico will consider whether the participant attempted to comply with the terms and conditions of the contract in good faith and/or whether the participant was unable to comply with the terms and conditions of the contract due to economic or personal hardship.

Approval of Contracts in Excess of \$150,000

Contract approval for contracts in excess of \$150,000 or approval of contract modifications that cause an existing contract to exceed \$150,000 may only be made by the Regional Assistant Chief. Request along with justification will be made by the Designated Conservationist through the Area Conservationist to the Assistant State Conservationist for Programs or designee.

New Mexico's purpose in this guidance is to provide consistent and equitable application of the policy covering various situations and circumstances.

440-Conservation Programs Manual

Subpart H – Contract Application Acceptance and Evaluation

NM515.81 Accepting Applications

d Starting Practices

Waivers to Begin a Practice Early

Waivers to begin a practice early, before a contract is signed, may only be approved by the State Conservationist (Authority delegated to the Assistant State Conservationist for Programs). Waiver requests to begin a practice early will only be considered after rankings have been completed and funds received within the state except in the case of natural disaster where immediate action is needed. The waiver request will be made in writing by the applicant to the Designated Conservationist who will forward the request through the Area Conservationist to the Assistant State Conservationist for Programs or designee.

Waivers to Complete a Cost-Share Practice within the First 12 Months.

Waivers to the rule requiring a cost-shared practice to be completed within the first 12 months may be approved by the Area Conservationists. Area Conservationists may delegate the authority to Designated Conservationist provided that notification is submitted to Area Conservationist including justification.

Waiver to the \$10,000 Maximum Payment Limitation

Waivers to the \$10,000 maximum payment limitation on 1996 Farm Bill Contracts (Pre 2002 Farm Bill Contracts) is delegated to the Area Conservationist and may be re-delegated to the Designated Conservationist.

440-Conservation Programs Manual

Subpart K - Contracting

NM515.115 Contract Termination

b Terminations Requested by Participants

Designated Conservationist Action: Participant's request for cancellation

1. Designated Conservationist will send letter to participant describing the requested action as well as reminding them of the terms contained in the appendix regarding cost recovery.
2. After 30 days from the date letter is sent to participant and no response in original request is indicated or communicated to designated conservationist, a letter will be prepared and sent to Area Conservationist describing the participant's request in detail and the recommended action. The Designated Conservationist will provide documentation that clearly supports the recommendation such as hardship, good faith effort, and involuntary loss of control of land and/or not to seek refund for financial and technical assistance. Likewise, Designated Conservationist will provide recommendation for recovery cost to Area Conservationist if applicable.
3. When a contract is cancelled, the Designated Conservationist will complete the following action:
 - a. Enter "cancelled" and the effective date of termination on the contract documents.
 - b. Update the contract status in Protracts.
4. Cancelled date is that date on letter sent by Area Conservationist to contract holder.

c Terminations by NRCS

Contract terminations are those contracts that are in non-compliance whereas cancellations are those instances where the producer requests to be released from the terms of the contract.

Designated Conservationists should consider the following prior to documenting and recommending termination of a contract:

1. Can the contract be modified to meet the intent of EQIP (solve the critical resource problems) and also meet the needs of the participant. This may involve changing the conservation practices or components used, or reducing the extent of a conservation practice. The original scope of the contract must still be met.

440-Conservation Programs Manual
Subpart K – Contracting

NM515.115 Contract Termination

c Terminations by NRCS

2. Are any other programs available that can also assist the participant in meeting the intent of the contract? For example, if the participant is facing financial problems, does a Conservation District cost-share program exist that can be used to supplement the EQIP contract. Many organizations, especially wildlife organizations, have programs that might be used to supplement an EQIP contract with minor changes in the practices being applied. The participant should be made aware of any known possibilities but it is the participant's responsibility to contact organizations and apply for any programs.
3. If termination is the only acceptable solution, the participant should be informed verbally and documented in the casefile that cost recovery and repayment of cost-share payments may be required.

Designated Conservationist Action: Non-Compliance (Terminations)

1. If contract is in non-compliance and clearly documented in contract folder that the participant has been provided the opportunity to rectify deficiencies within a specified time, a letter is sent clearly identifying the deficiencies and our intent to terminate the contract based on his/her decision not to comply with terms and conditions of contract. Send certified mail with return receipt requested.
2. If action is not taken or attempt is not made to be in compliance with terms and conditions of contract, a second letter will be sent after 30 days from the time the first letter was mailed. Send certified mail with return receipt requested.
3. If no action is not taken within 14 days after second letter is sent, Designated Conservationist will prepare letter to Area Conservationist describing in detail the recommended action. The Designated Conservationist will provide documentation that clearly supports the recommendation such as hardship, good faith effort, and involuntary loss of control of land and or not to seek refund for financial and technical assistance. Likewise, Designated Conservationist will provide recommendation for recovery cost to Area Conservationist if applicable.
4. When a contract is terminated, the Designated Conservationist will complete the following action:
 - a. Enter "terminated" and the effective date of termination on the contract documents.
 - b. Update the contract status in ProTracts.
5. Terminated date is that date on letter sent by Area Conservationist to contract holder.

(New Mexico Supplement No. 7, September, 2006)
(440-V-CPM, Amend. 24, October 2004)

NM515.K.115-1(2)

440-Conservation Programs Manual

Subpart K - Contracting

NM515.115 Contract Termination

c Terminations by NRCS

Area Conservationist Action:

1. Area conservationist will send letter to contract holder which clearly states action being taken and appeal rights if applicable. The most up-to-date Appeals Procedures will be followed. Presently the NRCS Appeals Procedure are those in 7 CFR 614 issued in the Federal Register on May 6, 2006. All adverse actions require appeal rights be provided. Area Conservationist will provide consistency and equitable application by using cost recovery table. For those situations or circumstances that are completely outside the guidelines, the Assistant State Conservationist for Programs and/or designee will be consulted before action is taken.
2. A copy of letter sent to contract holder will also be provided to the State Office at the same time.
3. Area Office will establish and maintain files with all decisions regarding terminations and cancellations.

State Office Action:

1. The Assistant State Conservationist for Programs and/or designee will provide a minimum of 20 % quality review for each Area on all terminated or cancelled contracts on a fiscal year basis.
2. The Assistant State Conservationist for Programs and/or designee will provide guidance on those situations that are unusual, extraordinary and/or outside the guidance recovery cost table.

(New Mexico Supplement No. 7, September, 2006)
(440-V-CPM, Amend. 24, October 2004)

NM515.K.115-1(3)

440-Conservation Programs Manual

Subpart K - Contracting

NM515.115 Contract Termination

d Documentation

Documentation of the request for cancellation or termination will contain enough information for the Area Conservationist to proceed with requested action to cancel or terminate the contract. The cost recovery will be based solely on the documentation provided by the Designated Conservationist to the Area Conservationist. The Area Conservationist will base their decision using the documentation and table below in reaching their decision. The Area Conservationist will prepare a letter to participant with the amount of refund, if any, and appeal rights. Required refund is to the Commodity Credit Corporation and submitted to the Field Office or Financial Management in the State Office. A copy of the letter will be sent to the State Office at the same time that participant is provided with decision.

440-Conservation Programs Manual

Subpart K - Contracting

NM515.116 Recovery of Costs

b Amount of Cost Recovery

Contract Terminations for 1996 Farm Bill Contracts (Pre 2002 Farm Bill Contracts)

New Mexico will not seek liquidated damages for 1996 Farm Bill contracts. However, financial assistance (cost-share obligations) may be requested to be refunded under the following conditions:

1. Non-compliance
2. Participant voluntarily requests cancellation
3. Participant voluntarily loses control of land and there is no successor-in-interest
4. Fraud
5. Applied practices are destroyed

Contract Terminations for 2002 Farm Bill Contracts

Guidelines for assessing cost recovery for technical and financial assistance on cancellation and termination requests are outlined in the table below.

Technical Assistance Cost Recovery Table

	Situation	1 st Year	2 nd Year	3 rd Year	4 th +Year
	Maximum Penalty	7.5%	15.0%	18.0%	20.0%
		A	B	C	D
1	Practice in the contract is not feasible or not needed for the resource situation	0	0	0	0
2	Clear documentation of unavoidable and unforeseen problems that have transpired since the contract was approved	0	0	0	0
3	Personal hardship of one or more participants is clearly documented	0	0	0	0
4	NRCS employee errors	0	0	0	0
5	Person wants to cancel contract to enroll in an easement program such as WRP or GRP	0	0	0	0
6	Participant's involuntary loss of control of land (bankruptcy)	0	0	0	0
7	Hardship beyond the participant's control that has prevented compliance	0	0	0	0
8	Good faith effort made by participant to comply	0	0	0	0

(New Mexico Supplement No. 7, September, 2006)
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440-Conservation Programs Manual

Subpart K - Contracting

NM515.116 Recovery of Costs

b Amount of Cost Recovery

	Situation	1st Year	2nd Year	3rd Year	4th+ Year
	Maximum Penalty	7.5%	15.0%	18.0%	20.0%
		A	B	C	D
9	Missing or incorrect signatures on CCC-1200 and/or CCC-1200 Appendix	0	0	0	0
10	Some documentation is provided regarding unavoidable and unforeseen problems transpiring since the contract was approved, but not clear and compelling	3.8%	7.5%	9.0%	10.0%
11	Personal hardship situation is mentioned, but strong and clear documentation is not provided	3.8%	7.5%	9.0%	10.0%
12	Other factors are cited such as increased costs and other similar miscellaneous factors	3.8%	7.5%	9.0%	10.0%
13	Person wants to cancel contract to switch to another program such as CRP	3.8%	7.5%	9.0%	10.0%
14	Termination was due to non-compliance with contract provisions	7.5%	15.0%	18.0%	20.0%
15	Practices installed with cost share have not been maintained or have been destroyed	7.5%	15.0%	18.0%	20.0%
16	Release from the contract is requested, but no supporting documentation is provided or supporting documentation does not meet the requirements above	7.5%	15.0%	18.0%	20.0%
17	Termination is due to fraud	7.5%	15.0%	18.0%	20.0%
18	Termination is due to non-compliance	7.5%	15.0%	18.0%	20.0%
19	Participant voluntary requests cancellation	7.5%	15.0%	18.0%	20.0%
20	Participant voluntarily loses control of land and there is no successor-in-interest	7.5%	15.0%	18.0%	20.0%

Some situations that may be considered “Hardship” might include, but not be limited to: death of the primary participant, bankruptcy, and involuntary loss of the land under contract. “Hardship” situations will generally not include financial difficulties or increases in the cost of applying a conservation practice.

440-Conservation Programs Manual

Subpart K - Contracting

NM515.116 Recovery of Costs

b Amount of Cost Recovery

Recovery of costs will not be requested for installed conservation practices that meet all of the following:

- Assurance that failure to perform remaining contracted practices will not impair the effectiveness of those installed.
- Assurance that installed practices will provide conservation or environmental benefits consistent with program goals and objectives.
- Assurance that installed practices will be operated and maintained for the life span of the practices.

Assurance will be provided by the contract holder and verified/documented by Designated Conservationist.

Recovery of costs will be requested for applied practices that are destroyed or that do not meet all of the conditions listed above.

When seeking recovery of cost for applied practices that do not meet the conditions listed above the following provides an approach if pro-rating the value and benefit of the practice is necessary if the practice is in place and functioning:

Use the cost share amount of the practice and divide by the life span and provide credit for the amount of time the practice was installed within the term of the contract. For example: Total cost share for a practice is \$8000 and the life span is 15 years. The practice was installed in the second year of the contract and the contract is in effect for 7 years out of a 10 year contract. The producer would be given credit for \$3,733 ($\$8,000/15 = \$533 \times 7 = \$3,733$) and the remaining \$4,267 ($\$8,000 - \$3,733 = \$4,267$) would be the amount recovered.