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Responsible Office: Highway Management  
Policy Number: 512-001(P)

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Director

## **POSTPONEMENT OF CONTRACT COMPLETION DATES AND WAIVER OF LIQUIDATED DAMAGES**

### **PURPOSE:**

This policy is to establish uniform procedures and criteria for granting waivers of liquidated damages and postponements of contract completion dates on construction administered projects.

### **AUTHORITY:**

The "Construction and Material Specifications," Sections 108.06 and 108.07

### **REFERENCES:**

The following attached documents:

Appendix A	Delay Due to Area-Wide Shortage of Materials
Form C-122	Postponement of Contract Completion Date
Form C-122a	Waiver of Liquidated Damages

### **SCOPE:**

This policy is for use by District Construction Offices in granting additional contract time for excusable delays and waivers of liquidated damages on construction contracts.

### **BACKGROUND:**

The Department has the power and duty to grant extensions of contract completion dates for excusable reasons and to waive liquidated damages when the work is substantially completed and the public is benefiting from the improvement with no disruption of traffic. However, this action must be exercised uniformly among the various Districts to insure equal and fair treatment of all Contractors.

**DEFINITIONS:**

**CMS:** Construction Management System, the Department-wide computer system for administration of construction projects.

**DCE:** District Construction Engineer

**Liquidated Damages:** Recuperation of Department costs for supervision and inspection in accordance with the schedule found in Section 108.07 caused by the Contractor not finishing the project work by the contract completion date. Damages greater than those specified in Section 108.07 are assessed for traffic delay costs if provision for such higher damages is made in the contract.

**Postponement of Contract Completion Date:** Change in the contract provision that stipulates the date by which the work must be complete. (Sometimes called a Time Extension)

**Section:** A section of the Construction and Material Specifications containing a contractual condition or specification.

**Waiver of Liquidated Damages:** The Department elects not to charge liquidated damages when minor work remains to be done after the original or postponed completion date.

**POLICY:**

I. A DCE is authorized to postpone contract completion dates when the work is delayed because of conditions beyond the control and without the fault of the Contractor as provided in Section 108.06. These postponements of the contract completion dates shall be granted when the extent of the delay is known or reasonably estimated to avoid forced acceleration costs. Contract completion dates are changed by completion of Form C-122 and entering the new date into CMS. Parts III and IV of this policy provide instructions on these procedures.

The District shall grant a postponement of the contract completion date when the Contractor shows an actual delay to the overall completion of the work due to any of the following:

A. New items of work or items of work that go beyond the contract limitations specified in Section 104.02 (extra work contracts). When the cost of an extra work contract is being negotiated, the negotiations should include time to perform the work. The time to perform the work should be stated in the extra work contract.

B. Sizeable increase in an item of work on a project with a total contract amount less than

\$200,000.00.

C. Weather in accordance with Section 108.06 or any cataclysmic phenomenon of nature beyond the reasonable ability of the Contractor to foresee or make preparation of defense thereof, such as earthquakes, cloudbursts, floods, snowstorms (accumulation greater than 6 inches) or tornadoes.

D. Use the following formula to convert work days (W) to calendar days (C):

$$C = (W \times 7 \div N) + H$$

where: N = number of days in Contractor's normal work week  
H = number of National Holidays and days work is restricted by the contract

E. If a project has a completion date or postponed completion date that falls between December 1 and April 30, allowance may be made when satisfactory workmanship cannot be attained.

F. Neglect or failure on the part of the Department, including time in excess of 30 calendar days, or other time frames specified in the contract, taken by the Department to review and return shop drawings to the Contractor, provided the submitted shop drawings had complete and acceptable information.

G. Acts of the Federal Government, State or Political Subdivisions, including design changes, plan errors or omissions.

H. Area-wide shortage of materials or equipment due to emergencies and strikes or due to extraordinary situations such as wrecks, embargoes, huge surge in demand, etc. See Appendix A for documenting area-wide shortage of materials.

I. Shortage of labor due to strikes except those caused by improper acts or omissions of the Contractor, also extraordinary shortage of particular kinds of labor required to carry on the work properly.

J. Epidemics, fires or acts of a public enemy.

K. Unforeseen delays beyond the control of the Contractor that could not have been avoided by proper planning.

- L. Neglect or failure by an outside entity (including railroads, utilities, local governments, etc.) to provide approvals specified in the contract in a timely manner.
  - M. Unreasonable interference caused by work performed or to be performed by others (including railroads, utilities, etc.)
- II. Section 108.07 allows a waiver of all or portions of liquidated damages that accrued after the work is in condition for safe and convenient use by the traveling public. A DCE is authorized to grant such waivers by completing Form C-122a and entering the waiver period into CMS. The following conditions must apply before a waiver is granted:
- A. The work must be substantially complete to the extent the new facility improvement is usable as intended by the contract.
  - B. The work remaining will not interfere with the intended use of the facility or improvement and will not affect traffic. Waivers shall not be granted for days the performance of the remaining work or corrective work affects traffic.
  - C. All contract safety items are complete and operational. These safety items include signs, pavement markings, guardrail, attenuators, and signals. Raised pavement markers (RPM) are required safety items if the roadway section involved had RPMs before the project started. Conditional exclusions are:
    - 1. Performance periods can be waived if there were no problems during these tests.
    - 2. The periods interim pavement markings are in place can be waived.
  - D. Maintenance type projects, which do not directly interact with the traveling public, may be exempted from liquidated damages when they are not completed before winter. These types of projects, such as painting of structural steel, painting of guardrail, herbicidal spraying, mowing, etc., may have the liquidated damages waived for time during which specifications will not allow the work to be performed because of weather (generally, December 1 through April 30 inclusive). In such cases, liquidated damages shall be assessed for the number of days:
    - 1. Between the contract completion date or postponed contract completion date through November 30.
    - 2. The Contractor works between December 1 and April 30, inclusive.
    - 3. From May 1 continuously until the date that the work is completed.

- E. Liquidated damages may be waived during performance of punch list or corrective work beyond the project completion date, provided the work does not affect traffic.
  - F. The waiver period should be terminated and liquidated damages assessed:
    - 1. If the Contractor has not started and diligently prosecuted corrective work within a reasonable time established by the Project Engineer.
    - 2. If the Contractor has not completed punch list items within the time limit stated in the Final Inspection Punch List issued by the District Deputy Director's Appointee for Final Inspections.
  - G. The DCE shall enter the period of a waiver into CMS on the "LIQID" screen.
- III. The following procedures are to be used in the preparation and approval of postponement of a contract completion date.
- A. When a request for postponement of a contract completion date is received from the Contractor, as required by 108.06 of the Specifications, the DCE shall evaluate and process the request within 30 days in accordance with this policy. If the request is approved, the Contractor will be notified by the issuing of an approved Form C-122. If the request is denied, acknowledgment of such shall be made by the DCE to the Contractor.
  - B. A review shall be made by the DCE of the request for postponement of a contract completion date received from the Contractor to determine if the postponement is justified.
  - C. If the postponement is justified, the District Construction Office shall complete a Form C-122 for each postponement of the contract completion date granted. This form shall list the reason(s) for the postponement of the contract completion date by placing the applicable Reason Code in the left column entitled Reason(s) followed by a brief explanation (justification for the postponement) to the right of the Reason Code. The Reason Codes are as follows:
    - EW Extra Work
    - F Fires, or epidemics
    - GA Acts of Federal, State, or Local Governments including design changes or plan errors
    - MS Shortage of material or equipment
    - O Other

SK	Strike
SN	Neglect or failure of the Department
U	Utility or railroad interference
UF	Unforeseen delays
W	Weather

example:

<u>Reason</u>	<u>Explanation</u>
EW	Additional deck repair required 3 days CO #12
W	Rain on June 3, 4, & 5, 1996
U	AEP did not raise power lines at Station 100+00 until 6/5/96 delayed start of work at Bridge 2734 by 14 days.

- D. The contract completion date is changed when the DCE signs this form. The DCE shall enter the new postponed completion date into CMS on the "LIQID" screen.
- IV. The DCE shall furnish copies of the approved Form C-122 or Form C-122a to the Contractor and FHWA (if the project has Federal oversight). The original approved Form C-122 or Form C-122a shall be retained in the District project file. Department personnel will obtain information about postponements of the contract completion dates and waivers of liquidated damages by monitoring the CMS "PROJ" screen.
- V. The following procedure shall be followed when a requested postponement of a contract completion date is not granted:
- A. When a Postponement of Contract Completion Date is not granted, the DCE will notify the Contractor in writing, stating reasons for disapproval.
- B. The Contractor shall request permission from the DCE to remain in control of the work. The DCE shall grant by letter the requested permission to remain in control, if in the DCE's judgement the Contractor will complete the project in a reasonable amount of time. This letter shall state that this permission does not waive liquidated damages that are accruing and that the permission is granted with the understanding the work will be completed by a date stipulated in the letter.
- C. If the Contractor is granted permission to remain in control of the work, the Contractor shall be required to submit a detailed work plan when requested by the DCE. The work

- plan shall show completion by the date established by the DCE. This detailed work plan is not the progress schedule specified in Section 108.02. Failure to comply with this work plan will be considered unsatisfactory progress in accordance with Section 108.08.
- D. If the Contractor disagrees with the denial of a postponement of the contract completion date, the Contractor has a right to file a claim in accordance with the Department's current claims process.
- VI. Postponements of contract completion dates may have associated Contractor costs that are compensable by change order. Compensable costs must be adequately documented. Waivers of liquidated damages do not entail compensable costs.
- A. Costs associated with the following delays are compensable:
1. Extra work that delays original contract items.
  2. Neglect or failure of the Department.
  3. Act of the Federal Government, State, or Political Subdivision, including design change, plan error, or omissions.
  4. Repair of completed work damaged by traffic.
- B. Costs associated with the following delays are not compensable:
1. Weather, except that field office and computer equipment may be compensable in accordance with the contract documents.
  2. Natural cataclysms, however, repair of damaged work caused by a natural cataclysm is compensable.
  3. Strikes.
  4. Shortages of labor, materials, or equipment.
  5. Epidemics, fires, and vandalism.
  6. Unforeseen delays.
- VII. If an interim completion date is specified in the contract documents, the same procedure as described above shall be followed for processing a postponement of an interim contract completion date or the waiver of liquidated damages for an interim contract completion date, except that no CMS entry is necessary.
- VIII. The Office of Highway Management (OHM) will review the various District Project files to determine each District's conformance to this Policy, Section 108.06, Section 108.07, written policy issued by OHM, and the contract documents in the granting of waivers of liquidated

damages and postponement of contract completion dates. This review will be conducted in accordance with the Quality Assurance Plan issued by OHM.

**DELAY DUE TO AREA-WIDE SHORTAGE OF MATERIALS**

- I. At least all of the following minimum documentation is required to justify an extension of time based on a material shortage.
  - A. The original commitment obtained by the Contractor from a supplier to furnish material for the job.
  - B. A refusal or indication of the inability of that supplier to fulfill the commitment.
  - C. Efforts, normal and reasonable, that the Contractor resorted to in an effort to overcome the failure of his original supplier.
  - D. In the event that work was never started or was started at a much later point in the contract then information should be provided to answer such questions as:
    - 1. If the Contractor elected to use his available material on other work, did an additional delay to the Department project occur?
    - 2. Was the Contractor ready to perform the work in question at the scheduled time or was it delayed into the period where materials were unavailable by events not eligible for an extension?
  - E. An affidavit attesting to the validity of the information is required. The purpose of the affidavit is to allow the Department to accept the data submitted by the Contractor without detailed verification.
- II. The Department has the responsibility, in accordance with 108.06, to judge whether or not the Contractor was in fact delayed, the effect of the delay on the project and whether or not the delay was beyond the control and without the fault of the Contractor.
  - A. This determination will be made by evaluating the information submitted by the Contractor and factual information from the project records. Copies of all information furnished by the Contractor must be attached to the C-122 requesting the time extension.
  - B. Since the procurement of materials is the Contractor's responsibility, the Department is not liable for any additional costs incurred because of delays related thereto.

**STATE OF OHIO  
DEPARTMENT OF TRANSPORTATION**

**POSTPONEMENT OF CONTRACT COMPLETION DATE**

Project/County	Contractor
Federal No.	Contract Completion Date
Route/Section	Previous Postponement Date(s)

Reasons and Explanations for Postponement . List separately, use reason codes given in Policy Number 512-001(P)

Reason Code(s)	Explanation(s)

Calendar Days Extension \_\_\_\_\_ Allowed Days + \_\_\_\_\_ Winter = \_\_\_\_\_ Total Days

Postponed Completion Date \_\_\_\_\_

Postponement Approved \_\_\_\_\_

District Construction Engineer

Date



**STATE OF OHIO  
DEPARTMENT OF TRANSPORTATION**

**WAIVER OF LIQUIDATED DAMAGES**

Project/County	Contractor
Federal No.	Contract Completion Date
Route/Section	Previous Postponement Date(s)

Liquidated Damages are waived in accordance with Section 108.07 of the Specifications

Project was open to safe and convenient use of the traveling public on \_\_\_\_\_

Remarks:

Waiver applies from \_\_\_\_\_ 19 \_\_\_\_ through \_\_\_\_\_ 19 \_\_\_\_\_ = Total Calendar Days = \_\_\_\_\_

Waiver Approved \_\_\_\_\_  
District Construction Engineer Date

C-122a  
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