

Approved:



William H. Lindenbaum,
Deputy Director

Standard Procedure No. 519-012(SP)

Effective Date: October 1, 2003

Responsible Division: Construction
Administration

TIME EXTENSIONS AND WAIVER OF LIQUIDATED DAMAGES

PURPOSE:

The purpose of this standard procedure is to establish uniform procedures and criteria for granting waivers of liquidated damages and time extensions on construction administered projects. It will provide guidelines for granting additional contract time for excusable delays and baseline progress schedule review.

REFERENCES:

Sections 108.06, 108.07, 109.12, and 614.11 of the Construction and Material Specifications, January 1, 2002

Sections 108.06 and 108.07 of the Construction and Material Specifications, January 1, 1997

Form C-122 Time Extensions
Form C-122a Waiver of Liquidated Damages

Proposal Note 107 Critical Path Method Progress Schedule (current)

DEFINITIONS:

C&MS: “Construction and Material Specifications”

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

CPM Schedule: The type of progress schedule outlined in Proposal Note 107 that delineates a critical path of work from the start of the project to the end of the project.

Calendar Days: Everyday shown on the calendar.

Completion Date:	The date, as shown in the Contract Documents, on which the work contemplated shall be completed.
Critical Path	The critical path is defined as the sequence of activities that must be completed on time to ensure that the Project finishes by the Contract Completion Date. Critical path activities have a total float of zero or less.
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.
Time Extensions:	Change in the contract provision that stipulates the date by which the work must be complete. (Previously known as Postponement of Contract Completion Dates)
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.
Workdays:	A calendar day that the Contractor normally works.

PROCEDURE STATEMENT:

I. Time Extensions and the Critical Path

A District is authorized to extend the completion date if an excusable delay, as specified in C&MS Section 108.06.B, 108.06.C and 108.06.D delays Work on the critical path shown on the accepted progress schedule. Non-critical activities, activities with total float greater than zero, will not be considered for delay until the total float is reduced to zero. The total float of an activity belongs to the project and is a shared commodity between the Contractor and the Department and is not for the exclusive use or benefit of either party. Either party has full use of the float until it is depleted.

These time extensions 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.

Notification and Workdays

The District will not evaluate a request for extension of the Completion Date unless the Contractor notifies the Engineer as specified in 104.02.G and provides required analysis as specified in 108.02.B.3. The Engineer will measure all time extensions in Calendar Days. For delays measured in work hours, the Engineer will sum the work hours and convert work hours to Workdays to one decimal point. For delays measured in Workdays, the Engineer will convert Workdays to Calendar Days by multiplying by 1.4 for a 5-day work week or less; 1.2 for a 6-day work week; and 1 for a 7-day work week; and extend the Completion Date by the resulting number of Calendar Days plus any holidays the Contractor does not normally work that occur in the extension period. When the conversion of Workdays to Calendar Days results in a decimal of .5 or greater, the Engineer will round the number of Calendar Days to the next highest whole number. When the conversion results in a decimal less than .5, the Engineer will delete the decimal portion of the Calendar Days.

Time Extensions Between December 1 and April 30

The Engineer will not grant an extension of time for delays incurred from December 1 to April 30 unless the Contractor's accepted progress schedule depicts work on the critical path occurring during this period. The Engineer should use good judgment and collective experience when evaluating a baseline schedule that depicts work on the critical path during the winter. Weather sensitive work should not be allowed from December 1 to April 30. If the Contractor submits baseline schedules indicating weather sensitive work during the winter, the Contractor should include a narrative explaining how they intend to complete the work during the time between December 1 and April 30. The Engineer may order the Contractor to continue Work after November 30 and compensate the Contractor for cost incurred due to cold weather Work.

Liquidated Damages

The District will relieve the Contractor from associated liquidated damages, as specified under 108.07, if the Engineer extends the Completion Date under C&MS Section 108.06.A.

Types of Delays

The C&MS Section 108.06 makes distinctions between Excusable, Non-Compensable Delays; Extension to the Completion Date for Weather; Excusable, Compensable Delays; Non-Excusable Delays; and Concurrent Delays.

A. Excusable, Non-Compensable Delays.

Excusable, non-compensable delays are delays that are not the Contractor's fault or the District's fault or responsibility. The Engineer will only grant a time extension and not additional payment for excusable, non-compensable delays. The following are excusable, non-compensable delays:

1. Delays due to floods, tornadoes, lightning strikes, earthquakes, or other cataclysmic phenomena of nature.
2. Delays due to weather as specified in C&MS Section 108.06C.
3. Extraordinary delays in material deliveries the Contractor or its suppliers cannot foresee or avoid resulting from freight embargoes, or government acts. Delays due to area-wide material shortages will be determined by Central Office. Delays due to Contractor's, subcontractor's, or supplier's insolvency or mismanagement are not excusable.
4. Delays due to civil disturbances.
5. Delays from fires or epidemics
6. Delays from labor strikes that are beyond the Contractor's, subcontractor's, or supplier's power to settle and are not caused by improper acts or omissions of the Contractor, subcontractor, or supplier.
7. Added quantities that delay an activity on the critical path.
8. All other delays not the Contractor's and District's fault or responsibility.

Example #1: The Contractor is working on underdrain (critical, total float = 0 days) work. The plans do not include 2000 LF of underdrain work and it is an added quantity. The Contractor requests two additional day in the progress schedule to perform the work. The Engineer grants a two day time extension because this work was on the critical path.

Example #2: The Contractor is working on drainage (non critical, total float = 10 days) work. One additional catchbasin was added to the plans to improve stormwater collection. The Contractor requests one additional day in the progress schedule to perform the work. The Engineer denies the one day time extension because the activity will still have 9 days of float and is not critical.

Example #3: The Contractor is working on concrete bridge form work (critical, total float = 0 days). The carpenters performing the work go on a statewide 14 day labor union strike. The Contractor requests ten additional workdays or 14 additional calendar days in the progress schedule because of the strike. The Engineer grants a 14 day time extension because the delay was beyond the Contractor's power and on the critical path.

B. Extensions to the Completion Date for Weather.

The Contractor will submit requests for extensions of time due to weather or seasonal conditions that delayed items of Work on the critical path, in writing to the Engineer at the end of each month.. The Engineer will extend the Completion Date 1 workday for each lost workday caused by weather, except workdays lost from December 1 to April 30.

When the Contractor's accepted progress schedule depicts Work on the critical path occurring during the period from December 1 to April 30, then the Engineer will provide a time extension for weather days lost in excess of those tabulated in the following table.

<u>Month</u>	<u>Number of Workdays Lost Due to Weather</u>
December	6
January	8
February	8
March	7
April	6

The Engineer will grant a time extension for every workday that weather reduces production by more than 50 percent on items of Work on the critical path. The Engineer will not consider weekends and holidays as lost workdays unless the Contractor normally works those days or unless the Engineer directs the Contractor to work on those days.

Example #4: The Contractor submits for four weather days in August. The Engineer checks and finds that all weather days were on the critical path. The Engineer can verify that three days had lost production more than 50 percent, but one day the Contractor was able to work for six hours of an eight hour day. The Engineer grants the Contractor a three day time extension to the completion date for August weather days.

Example #5: The Contractor submits for ten weather days in April. The Engineer checks and finds that all weather days were on the critical path. The Engineer also finds that six days were rained out and the other four days the Contractor made an effort to pump out, drain, and disc the subgrade to dry it. No production was achieved on these four days of dry time. The Engineer grants the Contractor a four day time extension (10 weather days minus 6 days allowable for April) for April weather days. Note: Had the Contractor made no effort to dry the subgrade (weather permitting), the Engineer would not consider the four day dry time as lost production. The Engineer would grant the Contractor a zero day time extension (6 weather days minus 6 days allowable for April) for April weather days.

C. Excusable, Compensable Delays.

Excusable, compensable delays are delays that are not the Contractor's fault or responsibility, and are the Department's fault or responsibility or are determined by judicial proceeding to be the Department's sole responsibility or are the fault and responsibility of a local government. For the following excusable, compensable

delays, the Engineer will extend the Completion Date if the following conditions are met:

1. Delays due to revised Work as specified in CMS 104.02.B, 104.02.D, or 104.02.F.
2. Delays due to utility or railroad interference within the Project limits.
3. Delays due to an Engineer-ordered suspension as specified in CMS 104.02.C.
4. Delays due to acts of the government or political subdivision other than the Department; however, these compensable delays are limited to escalated labor and material costs only, as allowed in CMS 109.05.D.2.b and 109.05.D.2.d.
5. Delays due to the neglect of the Department or its failure to act in a timely manner.

Example #6: The District has an urban project and the local government wants to make changes to the project while in construction. The changes result in some redesign and change in character of work (104.02.D). The changes are on the critical path of work and the Contractor requests a 60 day time extension to do the extra work. The Engineer and Contractor can partner and do 10 days of critical path work elsewhere, before starting the extra work. The Engineer will grant the Contractor a net 50 day time extension for the change in work.

Example #7: The Contractor wants to cross a railroad as part of his construction operations. The Contractor submits plans and design computations to the Engineer 50 days prior to scheduled construction as per CMS. The Engineer submits the plans to the involved railroad for acceptance before submitting the plans to the Director for acceptance. The railroad delayed the approval process by 30 days and the Contractor's critical path work was impacted. The Contractor requests a 30 day time extension. The Engineer will grant the Contractor a time extension of 30 days because of railroad interference.

D. Non-Excusable Delays.

Non-excusable delays are delays that are the Contractor's fault or responsibility. All non-excusable delays are non-compensable.

Example #8: The Contractor has started work on a project that requires much embankment. At a progress meeting, it was determined that two 60 day settlement periods, as per plan notes, were mistakenly absent in the progress schedule. The addition of these two activities put the early finish of the project 60 days beyond the completion date. The Contractor requested a time extension for the 60 day period. The Engineer will not grant the Contractor a time extension because this is a non-excusable delay. The Contractor should have had these activities in the baseline progress schedule as per the plan notes.

Example #9: The Contractor has started critical path work on the bridge structures of a project. The Contractor had difficulty locating skilled labor for construction, was delayed due to equipment availability, and had to change material suppliers because of poor quality control. The Contractor requests a 20 day time extension to complete work on the structures. The Engineer will not grant the Contractor a time extension because these are all non-excusable delays.

E. Concurrent Delays.

Concurrent delays are separate critical delays that occur at the same time. When a non-compensable delay is concurrent with a compensable delay, the Contractor is entitled to additional time but not entitled to additional compensation.

Example #10: The Contractor experiences two delays on the project. Delay #1 is a stop work order starting on June 1 and ending on June 30 for a total delay of 30 days. Delay #2 is a labor strike starting June 1 and ending on June 30 for a total delay of 30 days. The Engineer will grant the Contractor a 30 day time extension, but not additional compensation.

When excusable, non-excusable, compensable, or non-compensable delays are concurrent (critical and delaying the project at the same time), the non-excusable, or non-compensable delays take precedence.

Example #11: The Contractor experiences two delays on the project. Delay #1 is a stop work order starting on June 1 and ending on June 30 for a total delay of 30 days. Delay #2 is a labor strike starting June 1 and ending on June 27 for a total delay of 27 days. The Engineer will grant the Contractor a 30 day time extension and additional compensation for 3 days of delay.

II. Liquidated Damages

If the Contractor fails to complete the Work by the Completion Date, then the District, if satisfied that the Contractor is making reasonable progress, and deems it in the best interest of the public, may allow the Contractor to continue in control of the Work. The Department will pay the Contractor for Work performed on the Project less any liquidated damages incurred.

If the work is not completed by the completion date and the Contractor is permitted to continue in control, the Contractor shall provide a written plan for the completion of the work.

For each calendar day that Work remains uncompleted after the Completion Date, the Department will deduct the sum specified herein from any money due the Contractor, not as a

penalty, but as liquidated damages. The District will adjust the Completion Date or other contractually mandated dates as specified in C&MS Section 108.06. In the event one or more interim Completion Dates are specified without specific separate liquidated damages, the amount set forth in the schedule herein will separately apply to each interim date. In the event a period of liquidated damages for an interim Completion Date overlaps a subsequent Completion Date, the higher rate of liquidated damages will apply for the duration of the overlap.

Permitting the Contractor to continue and complete the Work or any part of the Work after the Completion Date, or after extensions to the Completion Date, will in no way operate as a waiver on the part of the Department of any of its rights under the Contract.

The District may stop deducting liquidated damages that accrue after the Work is in a condition for safe and convenient use by the traveling public.

Schedule of Liquidated Damages

Original Contract Amount (Total Amount of the Bid)		Amount of Liquidated Damages to be Deducted for Each Calendar Day of the Overrun in Time
<u>For More Than</u>	<u>To and Including</u>	
\$0.00	\$500,000	\$500
\$500,000	\$2,500,000	\$700
\$2,000,000	\$10,000,000	\$1,250
Over \$10,000,000		\$2,000

The above Schedule of Liquidated Damages is in the C&MS January 1, 2002. The liquidated damages are updated in two year cycles and the Engineer must check the appropriate year C&MS or proposal notes in the contract documents for a more current Schedule of Liquidated Damages or Liquidated Damages specific to that project.

Liquidated Damages for C&MS 109.12 Final Acceptance and Termination of Contractor Responsibility

A. Incomplete Punch List

The Final Inspector will issue to the Contractor a written punch list of minor Work required as a condition of final acceptance. The Final Inspector's punch list will stipulate a reasonable time to complete the required Work. Failure of the Contractor to complete the punch list items by the stipulated time will result in an administrative fee of \$100 per Calendar Day for every day beyond the stipulated time the punch list Work remains incomplete and beyond the revised Completion Date.

B. Liquidated Damages for Delinquent Finalization Documents

The Contractor shall accept the final quantities as determined by the Engineer or provide written notice indicating the reason for disagreement within 30 Calendar Days of receiving the Engineer's list of final quantities. If no notice of disagreement is received, then the final payment will be based on the Engineer's list of final quantities.

The Contractor shall supply all documents necessary for Project finalization within 60 Calendar Days from the date that the Work is physically complete. These documents include:

1. Delinquent material certifications.
2. Delinquent certified payrolls or required revised payrolls.
3. Wage affidavit required by ORC Chapter 4115 on projects without any Federal funding.
4. Completed form FHWA 47 on Federal-Aid projects over \$1,000,000 that are on the National Highway System, excluding beautification and railroad protective device projects.
5. Delinquent force account records.

Failure to submit these acceptably completed documents will result in an administrative fee of \$100 per Calendar Day for every day that any of the required documents remain delinquent, starting 30 Calendar Days after receipt of written notification from the Engineer of a document deficiency.

Liquidated Damages for C&MS 614.11 Work Zone Pavement Markings

- A. As per C&MS 614.11.G.1.b, for each Calendar Day beyond 3 days that this work remains incomplete, the Department will assess liquidated damages in the amount of \$1000 per Calendar Day. The time for the completion of no-passing-zone markings shall be considered an interim Completion Date.
- B. As per C&MS 614.11.G.3.b, for each Calendar Day beyond 21 days that this work remains incomplete, the Department will assess liquidated damages in the amount of \$1000 per Calendar Day. The time for the completion these markings shall be considered an interim Completion Date.

III. Preparation and Approval of a Time Extension

The following procedures are to be used in the preparation and approval of a time extensions.

- A. When a request for postponement of a contract completion date is received from the Contractor, as required by C&MS Section 108.06, the District shall evaluate and process the request within 30 days in accordance with this standard procedure. 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 District to the Contractor as detailed in Section VI Time Extension Not Granted.
- B. A review shall be made by the District of the request for time extension received from the Contractor to determine if the time extension is justified.
- C. If the time extension is justified, the District Construction Office shall complete a Form C-122 for each time extension granted. This form shall list the reason(s) for the time extension by placing the applicable Reason Code in the left column entitled Reason(s) followed by a brief explanation (justification for the extension) 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: Reason Explanation

EW	Additional deck repair required 3 days CO #12
W	Rain on June 3, 4, & 5, 2002
U	AEP did not raise power lines at Station 100+00 until 6/5/02 delayed start of work at Bridge 2734 by 14 days.

- D. The contract completion date is changed when the form is approved by the District and the approval is entered into CMS on the "LIQID" screen.

IV. Waiver of Liquidated Damages

The following procedure 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 District 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. The shoulder may be closed, but the roadway from edge line to edge line must be open to traffic. Waivers shall not be granted for days the performance of the remaining work or corrective work closes any area between the edge lines.
- 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 waiver period's interim pavement markings are in place.
- D. Maintenance type projects, which do not directly involve 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 for days lost due to inclement weather as defined in C&MS Section 108.06, should be waived when all safety items are in place and the roadway

is open without lane closures to the safe and convenient use of the traveling public. The shoulder may be closed provided no area between the edge lines is closed. This condition is applicable when the work is not substantially complete as provided in Section I A of this policy.

- F. 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.
- G. 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 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.
- H. The District shall enter the period of a waiver into CMS on the "LIQID" screen.

V. FHWA Notification

The District 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.

VI. Time Extensions Not Granted

The following procedure shall be followed when a requested time extension is not granted:

A. Procedure for Project with C&MS 1997

- 1. When a time extension is not granted, the District will notify the Contractor in writing, stating reasons for disapproval.
- 2. The Contractor shall request permission from the District to remain in control of the work. The District shall grant by letter the requested permission to remain in control, if in the District's judgment 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.
- 3. 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 District. The work plan shall show completion by the date established by the

District. This detailed work plan will include at a minimum, a detailed narrative and the progress schedule specified in C&MS Section 108.02. Failure to comply with this work plan will be considered unsatisfactory progress in accordance with C&MS Section 108.08.

4. If the Contractor disagrees with the denial of a time extension, the Contractor has a right to file a claim in accordance with the Department's current claims process.

B. Procedure for Project with C&MS 2002

1. When a time extension is not granted, the District will notify the Contractor in writing, stating reasons for disapproval.
2. The District will request that the Contractor submit a detailed work plan that will show completion by the date established by the District. This detailed work plan will include at a minimum, a detailed narrative and the progress schedule specified in C&MS Section 108.02. Failure to comply with this work plan will be considered unsatisfactory progress in accordance with C&MS Section 108.08.
3. If the Contractor disagrees with the denial of a time extension, the Contractor has a right to file a claim in accordance with the Department's current claims process.

VII. Interim Completion Dates

If an interim completion date is specified in the contract documents, the same procedure as described above shall be followed for processing a time extension or the waiver of liquidated damages for an interim contract completion date, except that no CMS entry is necessary.

TRAINING:

The Office of Construction Administration will perform a Quality Assurance Review (QAR) by reviewing various District Project files to determine each District's conformance to:

1. Policy 519-XXX(P) and Standard Procedure 519-XXX(SP).
2. C&MS Sections 108.06, 108.07 and 614.11.
3. Written Administrative Rulings issued by the Office of Construction Administration.
4. Contract documents in the granting of waivers of liquidated damages and time extensions.

FISCAL ANALYSIS:

This policy will not have any monetary impact.

**STATE OF OHIO
DEPARTMENT OF TRANSPORTATION**

TIME EXTENSION

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

Reasons and explanations for time extension. List separately, use reason codes given in Standard Procedure Number 519-XXX(SP)

Reason Code(s)	Explanation(s)

Calendar Days Extension _____ Allowed Days + _____ Winter = _____ Total Days

Time Extension Completion Date _____

Time Extension Approved _____

Signature Title Date

**STATE OF OHIO
DEPARTMENT OF TRANSPORTATION**

WAIVER OF LIQUIDATED DAMAGES

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

Liquidated Damages are waived in accordance with C&MS Section 108.07.

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

Remarks:

Waiver applies from _____ 20 ____ through _____ 20 ____ = Total Calendar Days = _____

Waiver Approved _____

Signature

Title

Date