

531.204L Waiver Requirements and Procedures

I. Purpose

This exhibit supplements the waiver policy set forth in Title 440, Conservation Programs Manual (CPM) (440-CPM), Part 531, Section 531.6, and further specifies the requirements and procedures for processing requests for waivers applicable to 2018 Farm Bill RCPP proposals, projects, agreements, and contracts.

II. Waiver Categories and Delegations

- A. The broad categories of waivers and the associated level of delegated authority for the approval of such waivers are as follows:
- (1) National Policy Waivers.—These are requests which if authorized would result in a deviation from established policy and procedure, including the terms of the applicable notice of funding opportunity (NFO) or RCPP agreement or contract. National policy waivers should be rare given the risks and the range of options available under RCPP policy to achieve desired conservation outcomes. The NRCS Chief, Associate Chief, and Deputy Chief for Programs (DCP) have delegated authority to approve such waivers and may further delegate such authority to the appropriate Programs division director.
 - (2) Waivers Under Policy for Defined Circumstances.—These are not deviations from policy, but are instead specific alternatives provided for in policy that allow for waivers of specific requirements to the extent, and subject to, the conditions and procedures set forth in the policy itself. Examples include waivers of the adjusted gross income (AGI) requirements, waivers of the RCPP certain match or contribution requirements, and waivers of payment limitation requirements (see also paragraph V, “RCPP Waivers Under Policy,” in this exhibit). The Chief, Associate Chief, DCP, and Programs division directors, have delegated authority to approve any waiver under policy.
- B. For waivers that require National Headquarters (NHQ) approval, no waiver may be considered without support from the State conservationist recommending its approval. The Chief, DCP, Programs division directors, and State conservationists have delegated authority to deny any waiver request. Authority to approve a waiver is specific to the type of waiver and must follow the delegations as set forth in in this manual and related policy, including Title 130, General Manual (GM), Part 400, Section 400.13, 440-CPM, Part 530, “Working Lands Conservation Programs Manual” (440-CPM-530), and other national directives.

III. General Requirements and Procedures

- A. All requests for waivers must first be evaluated at the State level, and—
1. For requests that would require a waiver of national policy, RCPP State coordinator must first collaborate with the RCPP partner, applicant, or participant, and the relevant NRCS program experts to identify options to achieve the objectives and desired outcomes within existing policy and procedures.
 2. For requests for waivers under policy, the RCPP State coordinator must evaluate the request in accordance with the policy applicable to the specific waiver type.
- B. Following the State-level evaluation, for all waiver requests supported by the State conservationist, the State RCPP coordinator must prepare a waiver request package. The waiver request package must include a copy of the written request from the affected RCPP applicant, partner, or producer (requestor), and the required supporting documentation based on the specific type of waiver being requested.

531.204L Waiver Requirements and Procedures

- C. For waiver requests that require NHQ approval, the waiver request package must be submitted in writing to NHQ, and unless otherwise specified, must include a copy of the State conservationist's written recommendation for approval. NHQ approval by the appropriately authorized NRCS official is required for—
- (1) All national policy waivers.
 - (2) Waivers under policy that require NHQ approval as specified in the policy for the specific waiver type.
 - (3) Any requested waivers for which approval authority is not directly addressed in policy.

Note: Requests for waivers that are not supported by the State conservationist should not be submitted to NHQ for review and approval. The RCPP State coordinator must document the findings and determinations and the State conservationist must document in writing that the requested waiver is not approved.

- A. For waivers that require NHQ approval, States must not proceed without the written NHQ determination of approval or denial of the waiver request. Once the appropriately authorized NRCS official approves or denies the waiver request, States must notify the requestor in writing. States may use and customize the template letter found in 440-CPM-530, Exhibit 530.141P, "General Waiver Letter" to notify the requestor of the determination.
- B. States must retain a copy of the notification to the requestor and where applicable, a copy of the NHQ waiver determination response, in the applicable project, agreement, or contract case file to which it applies. When applicable, States must upload the documents or include a reference to their location in the appropriate business tool and must follow any additional instructions in the individual waiver approval letter.
- C. Implementation of an approved waiver must be within scope of its approval. Approved waivers apply only to the proposals, agreement, transactions, or situations for which they are approved.
- D. Unless otherwise identified in the waiver approval documentation itself, the approval to implement activities as authorized by the waiver, including the execution of a contract, agreement, or other instrument subject to the terms of the waiver, expires at the end of the fiscal year in which the waiver is approved. Once executed, the terms of the agreement, contract, or other instrument remain valid for its lifespan subject to its terms.

IV. National Policy Waivers

- A. A national policy waiver request package must also include:
1. Documentation that there is adequate justification for the waiver to national policy, including a description of the alternatives evaluated and the rationale for the recommended alternative.
 - The rationale for the recommended alternative must:
 - (1) be consistent with the purposes and objectives of the policy to be waived,
 - (2) needed to adapt to a specific aspect of the situation, and
 - (3) maintain the fair and equitable treatment of program applicants and participants.
 2. The State conservationist's written recommendation that a waiver of national policy is appropriate, equitable, and consistent with applicable statutes and regulations.
- B. A request for a waiver of national policy must be submitted as follows:

531.204L Waiver Requirements and Procedures

1. Depending on the type of waiver, requests may be submitted during programmatic partnership agreement (PPA) negotiations or later in the project. All waiver request packages must be submitted to the “Policy Waiver Request” tab of the [FAPD SharePoint](#).
2. For RCPP awards, including supplemental agreements (SAs) or program contracts, requests should be submitted prior to execution of contract or agreement, or must be submitted prior to the initiation of any activity that would be otherwise precluded in the absence of the waiver. The waiver request package must be submitted to—
 - i. For SA type I–III and program contracts not related to U.S.-held easements.—Follow FAPD Waiver request processes. Submit through [FAPD SharePoint under policy waiver list](#). Refer to policy in 440-CPM-530, Section 530.7, “Policy Waivers,” and National Instruction (NI) 440-311, “Submitting and Processing State Requests using the Financial Assistance Program Division (FAPD) SharePoint Site,” for additional guidance.
 - ii. For SA type IV and program contracts related to U.S.-held easements.—Follow EPD Program Activity Management Solution (PAMS) submission procedures and submit through PAMS:
https://usdagcc.sharepoint.com/sites/nrcs_programs/epd/pams/SitePages/GeneralReqManagment.aspx.

Note: for additional information on SA types, see 440-CPM-531, Subpart E, “Supplemental Agreements,” and National Instruction 440-315, “Guidance for Regional Conservation Partnership Program (RCPP) Negotiated Supplemental Agreements (SA).”

V. RCPP Waivers Under Policy

- A. AGI Applicability or Limitation Waivers.—Processing and submission of requests for an AGI-related waiver must follow the requirements in National Instruction 440-314, “Adjusted Gross Income (AGI) Waivers Process.”
- B. RCPP Project Funding Financial Assistance (FA) and Technical Assistance (TA) Ratio Waiver.—All RCPP project proposal budgets submitted by partners must have a funding breakdown consistent with the FA/TA identified in the NFO (e.g., 70 percent FA, 30 percent TA). Where a specific RCPP project may benefit from a different FA/TA ratio, the partner may include in their RCPP project proposal their request for a waiver of the identified FA/TA ratio. The request from the lead partner must include an explanation of the need, the benefits, why the same benefits cannot be achieved under the identified ratio, and other information required by NRCS to evaluate the request. If a proposal with a proposed waiver is selected, then prior to execution of the PPA, States must analyze the waiver request as described in this part and subject to any additional requirements set forth in the relevant NFO. For those requests supported by the State conservationist, the waiver request package must be submitted to NHQ for review and determination. Submit through [FAPD SharePoint under policy waiver list](#). If the FA/TA ratio waiver request is approved by NHQ, the project’s allocated funds will be adjusted accordingly.
- C. RCPP Public Works and Watershed Project Matching Funds Waiver.—For public works or watershed project components of an RCPP project, the matching funds requirements may be reduced or waived if funding is awarded to a project in which the benefits will principally accrue to communities or regions where most residents meet limited resource or socially disadvantaged criteria as included in the 2018 Farm Bill. The request from the lead partner must identify the proposed funding breakdown, an explanation of the benefits, and evidence that the majority of the residents in the community or region meet the definition of

531.204L Waiver Requirements and Procedures

historically underserved as set forth in 7 CFR Part 1464. Once the request is analyzed by the State, for those requests supported by the State conservationist, the waiver request package must be submitted to NHQ for review and determination. Submit through [FAPD SharePoint under policy waiver list](#). If the matching funds waiver request is approved by NHQ, the RCPP PPA and the SA for the individual projects affected by the waiver must include the terms specified in the NHQ waiver determination documentation.