

until March 6, 1996. Comments are to be identified with the docket number found in brackets in the heading of this document.

A summary of the workshop will be included in a subsequent Federal Register notice related to this prescription drug labeling initiative.

Dated: January 22, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96-1740 Filed 1-29-96; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF STATE

### Bureau of Economic and Business Affairs

#### 22 CFR Part 89

[Public Notice No. 2323]

#### Foreign Prohibitions on Longshore Work by U.S. Nationals

**AGENCY:** Department of State.

**ACTION:** Proposed rule; Extension of comment period.

**SUMMARY:** On November 24, 1995, the Department of State issued a proposed rulemaking regarding longshore work by foreign nationals in U.S. ports and waters. To assess the full effects of the proposed rule, the Department is extending the deadline for comments by 7 days, from January 26, 1996 to February 2, 1996.

**DATES:** Interested parties are invited to submit comments in triplicate no later than February 2, 1996.

**ADDRESSES:** Comments may be mailed to the Office of Maritime and Land Transport (EB/TRA/MA), Room 5828, Department of State, Washington, DC 20520-5816.

**FOR FURTHER INFORMATION CONTACT:** Richard T. Miller, Office of Maritime and Land Transport, Department of State, (202) 647-6961.

**SUPPLEMENTARY INFORMATION:** On November 24, 1995, the Department of State issued a proposed rulemaking (60 FR 58026) updating the list of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation or in practice in the country. The crews of ships registered in or owned by nationals of the countries on the list may not perform the activities enumerated on the list. On December 20, 1995, the Department extended the comment period by thirty days in response to requests from a number of

parties (60 FR 65609). To assess the full effects of the proposed rule, the Department is further extending the deadline for comments by one week, from January 26, 1996 to February 2, 1996.

(8 U.S.C. 1288, Pub. L. 010-649, 104 Stat. 4878)

Dated: January 25, 1996.

Daniel K. Tarullo,

Assistant Secretary Economic and Business Affairs Department of State.

[FR Doc. 96-1821 Filed 1-26-96; 10:43 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Parts 630, 635 and 771

[FHWA Docket No. 96-3]

RIN 2125-AD58

#### Federal-Aid Project Agreement and Contract Procedures

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA proposes to amend its regulation on project agreements. The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 modified the requirement that preliminary engineering and right-of-way projects must be advanced to the construction stage within certain time limits. Changes to the agreement provisions are being proposed to reflect these adjustments. Additionally, procedures would be added to provide flexibility in the format of the agreement document and to permit the development of a single document to serve as both the project authorization and project agreement document. Other changes would be made to shorten the agreement document and to add clarity to the process.

The FHWA also proposes to amend its regulation on contract procedures by incorporating into it provisions regarding overruns in contract time that would be removed from the project agreement regulation. The FHWA believes this material more appropriately belongs under contract procedures.

**DATES:** Written comments are due on or before April 1, 1996. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** All written, signed comments should refer to the docket

number that appears at the top of this document and should be submitted to Federal Highway Administration, Office of Chief Counsel, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Jack Wasley, Office of Engineering, 202-366-0450, or Wilbert Baccus, Office of the Chief Counsel, 202-366-0780, FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Under the provisions of 23 U.S.C. 110, a formal agreement between the State highway agency and the FHWA is required for Federal-aid highway projects. This agreement, referred to as the "project agreement," is in essence a written contract between the State and the Federal Government defining the extent of the work to be undertaken, the State and the Federal shares of a project's cost, and commitments concerning maintenance of the project.

The present regulation, 23 CFR 630, subpart C, provides further requirements concerning the project agreement. It includes detailed instructions on preparation of the project agreement, a standard form for the agreement, and an assemblage of agreement provisions that are part of the standard form. This is a longstanding regulation and no significant changes have been made to it in several years.

It is the FHWA's desire to update and modify the existing regulation to incorporate needed changes to reflect adjustments made by the ISTEA, Pub. L. 102-240, 105 Stat. 1914, to streamline the project agreement form and provisions, and to allow more versatility in its use. The proposed changes are discussed in the following section-by-section analysis.

#### Section-by-Section Analysis

##### Section 630.301 Purpose

The statement of purpose would be revised with minor changes for clarity.

##### Section 630.302 Definitions

It is proposed to remove § 630.302. The terms *calendar day*, *contract time*, *incentives/disincentives for early completion*, *liquidated damages*, and *workday* would be relocated to 23 CFR 635.102. The terms *bond issue project*,

*Federal-aid highway project, and highway planning and research project* have such commonly recognized meanings that they would be removed from the regulation.

Since it is proposed to move § 630.305, Agreement provisions regarding overrun in contract time, without modification to 23 CFR 635.127, definitions relevant to § 630.305, i.e., *certification acceptance project, Division Administrator, and State highway agency*, would be removed from § 630.302.

#### *Section 630.303 Policy*

Section 630.303 would be combined with § 630.304 to create a new § 630.303, Preparation of agreement. A State would continue to be required to prepare a project agreement for each Federal-aid highway and FHWA planning and research project. However, it is proposed to eliminate Form PR-2 (Federal-Aid Project Agreement) and the instructions on its preparation. Instead, a State would develop its own form for the project agreement, provided it contains information identified as necessary by the regulation.

Additionally, the current practice of allowing the project agreement and project authorization (as required under 23 CFR 630, subpart A) to be combined into one document would be incorporated into the regulation. This section also would allow the use of electronic forms and signatures as developed and implemented by the FHWA.

Although the Form PR-2 would be eliminated from the regulation, it is anticipated a sample project agreement form would be added as nonregulatory guidance in the Federal-Aid Policy Guide. For illustrative purposes only, a copy of a sample project agreement is shown in Figure 1.

#### *Section 630.304 Preparation of Agreement*

This section would be eliminated because of the proposal to combine § 630.304 with § 630.303 to create a new § 630.303 with the section heading, Preparation of agreement. As discussed, the regulation would no longer provide for use of a specific form. Instead, a State would be allowed the flexibility to use whatever format is suitable to provide the information required for a project agreement document.

#### *Section 630.305 Agreement Provisions Regarding Overruns in Contract Time*

This section, which covers provisions regarding overruns in contract time, would be relocated to 23 CFR 635.127, without modification. Because these

provisions deal with aspects of contract administration, they would more appropriately be included in FHWA's regulation on contract procedures, 23 CFR 635, subpart A.

#### *Section 630.306 Modification of Original Agreement*

It is proposed to revise this section and redesignate it as new § 630.305 with retention of the same section heading. A State would continue to be required to prepare a modification to a project agreement as changes occur. However, it is proposed to eliminate the specified Form PR-2A (Modification of Federal-Aid Project Agreement). Instead, a State could develop its own form for modification of project agreement, provided it contains necessary information as identified by the regulation.

Although the Form PR-2A would be eliminated from the regulation, it is anticipated that a sample form for a modification of project agreement would be added as nonregulatory guidance in FHWA's Federal-Aid Policy Guide (available for copying and inspection as prescribed at 49 CFR Part 7, appendix D). For illustrative purposes only, a copy of a sample modification of project agreement is shown in Figure 2.

#### *Section 630.307 Agreement Provisions*

A new section would be added identifying the provisions that must be a part of each agreement. Currently, the Form PR-2 contains 20 boilerplate provisions. These provisions take up three pages and add considerably to the bulk of the form. In addition, many provisions just restate requirements of law that apply to Federal-aid projects in general.

It is FHWA's desire to simplify the project agreement by eliminating all the boilerplate provisions from the agreement itself. The provisions that are necessary would be included in this section of the regulation. The simplified project agreement would then, by reference to this section, incorporate the provisions into each agreement. The following discussion covers each of the existing 20 boilerplate provisions and describes what deletions or revisions are being proposed.

Provision 1, Responsibility for Work, would be eliminated and replaced with the general provision that now appears on the top front of the sample project agreement form. (This would appear as § 630.307(a) in the proposed regulation.) Under this general provision, the State agrees to comply with title 23, United States Code (U.S.C.), the regulations implementing title 23, and the policies and procedures established by the

FHWA. In addition, language has been added reflecting that States must also comply with all other applicable Federal laws and regulations. This general provision is broad in scope and there is little need for other provisions, such as, Provision 1 which covers only a limited feature of title 23, U.S.C.

Provision 2, Highway Planning and Research Project, would be eliminated. Requirements concerning planning, research funding, and projects are set forth in 23 CFR 420. In light of proposed new Provision 1 and its broad scope, there is no need for Provision 2.

Provision 3, Project for Acquisition of Rights-of-Way, would be retained (proposed § 630.307(c)(1)) because it corresponds to a requirement in 23 U.S.C. 108(a) that the agreement between the State and the FHWA shall include a provision that construction shall begin within a specified period of time. However, Provision 3 would be modified to change the specified time period from 10 years to 20 years. This reflects an amendment to 23 U.S.C. 108(a) resulting from passage of section 1017(a) of the ISTEA.

Provision 4, Preliminary Engineering Projects, would be retained (proposed § 630.307(c)(2)) but modified. Prior to passage of the ISTEA, this provision represented an administrative decision by the FHWA to require repayment of Federal-aid highway funds authorized for preliminary engineering if right-of-way acquisition or actual construction had not begun within 5 years after authorization of the preliminary engineering. The general concept of this provision is now found in the statute; section 1016(a) of the ISTEA incorporated this provision into 23 U.S.C. 102(b). One significant difference between the statutory provision and the existing FHWA practice is that 10 years instead of 5 years must pass before payback is required. Provision 4 would be modified to reflect the 10-year payback period.

Provision 5, Interstate System Project, would be eliminated. Requirements for agreements relating to use of and access to rights-of-way on the Interstate system are contained in 23 U.S.C. 111. In light of proposed new Provision 1 and its broad scope, there is no need for Provision 5.

Provision 6, Project for Construction in Advance of Apportionment, would be eliminated. The requirement in Provision 6(a) is adequately covered in 23 U.S.C. 115. Provision 6(b) is considered superfluous.

Provision 7, Stage Construction, would be eliminated. This is dated policy that is no longer appropriate in many cases.

Provision 8, Bond Issue Projects, would be eliminated. Requirements concerning bond projects are found in 23 U.S.C. 122 and the implementing regulation 23 CFR 630, subpart G. In light of proposed new Provision 1 and its broad scope, there would be no need for Provision 8.

Provision 9, Special Highway and Planning Research Project, would be eliminated. Requirements on planning and research projects are set forth in 23 CFR 420. In light of proposed new Provision 1 and its broad scope, there would be no need for Provision 9.

Provision 10, Parking Regulation and Traffic Control, would be eliminated. The State is ultimately responsible for any project undertaken with the cooperation of another government agency (23 CFR 1.3) and for maintenance of the project (23 U.S.C. 116 and 23 CFR 1.27). Adequately maintaining a project includes the issue of parking regulations and traffic control. In light of proposed new Provision 1 and its broad scope, there would be no need for Provision 10.

Provision 11, Signing and Marking, would be eliminated. The FHWA believes that 23 U.S.C. 109(d) and the implementing regulations in 23 CFR 655 adequately address this issue. In light of proposed new Provision 1 and its broad scope, there would be no need for Provision 11.

Provision 12, Maintenance, would be eliminated. Maintenance requirements for Federal-aid highway projects are found in 23 U.S.C. 116. In light of proposed new Provision 1 and its broad scope, there would be no need for Provision 12.

Provision 13, Liquidated Damages, would be eliminated. Requirements concerning liquidated damages are contained in FHWA regulations (presently in 23 CFR 630, subpart C, although this proposed rulemaking would transfer these requirements to 23 CFR 635, subpart A). In light of proposed new Provision 1 and its broad scope, there would be no need for Provision 13.

Provision 14, Implementation of Clear Air Act and Federal Water Pollution Control Act, would be eliminated. These are requirements of Federal law and they apply to Federal-aid projects in general. The existing reference in the project agreement to these other Federal laws serves no legal purpose and is considered extraneous information that could be removed from the form.

Provisions 15, 16 and 17, covering Equal Opportunity, Nondiscrimination, and Minority Business Enterprises, would be eliminated. These same requirements are expressed in 23 CFR

200, 230, and 633 subpart A. The three provisions have been updated and incorporated into the Form FHWA-1273, "Required Contract Provisions, Federal-Aid Construction Contracts." Subpart A of part 633 contains the regulatory requirements for Form FHWA-1273. In light of proposed new Provision 1 and its broad scope, there would be no need for Provisions 15, 16 and 17.

Provision 18, Bicycle Transportation and Pedestrian Walkways, would be eliminated. The requirements of this provision are found in 23 U.S.C. 217 and 23 CFR 652. In light of proposed new Provision 1 and its broad scope, there would be no need for Provision 18.

Provision 19, Modified or Terminated Highway Projects, would be eliminated. This provision merely highlights exceptions to the payback requirements that are found in other existing regulations. In light of proposed new Provision 1 and its broad scope, there would not be a need for Provision 19.

Provision 20, Environmental Impact Mitigation Features, would be removed from 23 CFR Part 630 and moved to 23 CFR Part 771. The requirements of this provision ensure that State Highway agencies comply with Federal mitigation standards as directed by the Council on Environmental Quality (CEQ) regulations for implementing National Environmental Policy Act (NEPA) (40 CFR 1505.3). The State Highway agencies would then be required to comply with 23 CFR 771 through the broad scope of proposed new Provision 1.

New provisions would be added to require that certain certifications be given to the FHWA. These certifications would be: § 630.307(c)(3) for drug-free workplace certification required by 49 CFR 29.630, § 630.307(c)(4) for suspension/debarment certification required by 49 CFR 29.510, and § 630.307(c)(5) for lobbying certification required by 49 CFR 20.110. States must provide these certifications for each project. Placing language in the project agreement as part of the general provisions is considered an effective solution to providing a separate certification action for every project.

The FHWA is considering whether specific requirements of applicable Federal laws and regulations should be expressly covered in the proposed regulation. Proposed § 630.307(a) provides that the States generally agree, in the project agreement process, to comply with all other applicable Federal laws and regulations. This general provision would include laws such as title VI of the 1964 Civil Rights

Act. The FHWA is considering whether reference should be made to specific laws, such as title VI. One possible option, for example, would be to have the regulation require certification to the FHWA by the State that it has met the Standard DOT title VI Assurance requirements, just as the proposed rule would require certification for a drug-free work-place or lobbying. Another option would be to list on the revised project agreement certain Federal laws, such as title VI, with which the State agrees to comply by signing the agreement itself. Comment is solicited on the need to specifically refer to other non-title 23 Federal laws and regulations with which the States must comply, such as through a statement incorporating those laws and regulations by reference or listing them directly on the project agreement form.

#### *Appendix A—Federal-Aid Project Agreement, Form PR-2*

The existing Form PR-2 would be eliminated. No specific form for the project agreement would be specified. Instead, a State would have the flexibility to develop its own form provided it includes the appropriate information. For illustrative purposes only, a copy of a sample project agreement is shown in Figure 1.

#### *Appendix B—Modification of Federal-Aid Project Agreement, Form PR-2A*

The existing Form PR-2A would be eliminated. No specific form for the modification of project agreement would be specified. Instead, a State would have the flexibility to develop its own form provided it includes the appropriate information. For illustrative purposes only, a copy of a sample modification of project agreement is shown in Figure 2.

#### *Appendix C—Federal-Aid Project Agreement (National Cooperative Highway Research Program), Form PR-2.1*

This form would be eliminated. It is no longer needed because the greater flexibility for the project agreement process would allow for planning and research project requirements.

#### *Section 635.102 Definitions*

This section would incorporate the definitions contained in § 630.302(b), (d), (h), (i), and (k). These definitions apply to § 630.305, Agreement provisions regarding overrun in contract time. Due to the proposal to move § 630.305 to § 635.127, the definitions contained in § 630.302(b), (d), (h), (i), and (k) would be moved and inserted in alphabetical order into the definitions

currently in this section. The term *Secondary Road Plan* would be removed as this plan no longer exists.

*Section 635.127 Agreement Provisions Regarding Overruns in Contract Time*

It is proposed to redesignate § 630.305 as § 635.127. The text of the section would remain unchanged.

The following table is provided to assist the user in locating regulatory paragraph changes proposed by this rulemaking:

Old section	New section
630.301 .....	630.301.
630.302 .....	Removed (except (b), (d), (h), (i), and (k)).
630.302(b) .....	635.102.
630.302(d) .....	635.102.
630.302(h) .....	635.102.
630.302(i) .....	635.102.
630.302(k) .....	635.102.
630.303 .....	630.303.
630.304 .....	630.303.
630.305 .....	635.127.
630.306 .....	630.305.
Appendix A .....	Removed.
Prov. 1 .....	Removed.
Prov. 2 .....	Removed.
Prov. 3 .....	630.307(c)(1).
Prov. 4 .....	630.307(c)(2).
Prov. 5 through 19 ....	Removed.
Prov. 20 .....	771.109(d).
Appendix B .....	Removed.
Appendix C .....	Removed.

BILLING CODE 4910-22-P

Figure 1

<b>TO BE COMPLETED BY FHWA</b>	 <p><b>FEDERAL-AID PROJECT AGREEMENT</b> U.S. Department of Transportation Federal Highway Administration</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="padding: 2px;">STATE</td></tr> <tr><td style="padding: 2px;">COUNTY</td></tr> <tr><td style="padding: 2px;">PROJECT NO.</td></tr> </table>	STATE	COUNTY	PROJECT NO.
STATE					
COUNTY					
PROJECT NO.					
<p>The State stipulates that as a condition to payment of the Federal funds obligated, it accepts and will comply with the agreement provisions set forth in 23 CFR 630.307.</p>					
<p><b>PROJECT TERMINI</b></p>   					
<b>PROJECT CLASSIFICATION OR PHASE OF WORK</b>		<b>EFFECTIVE DATE OF AUTHORIZATION</b>			
FHWA PLANNING AND RESEARCH					
PRELIMINARY ENGINEERING					
RIGHTS-OF-WAY					
CONSTRUCTION					
<p><b>OTHER (Specify)</b></p>   					
<p><b>ESTIMATED TOTAL COST OF PROJECT</b></p> <p>\$ _____</p>	<p><b>IDENTIFY FEDERAL SHARE</b></p> <p><input type="checkbox"/> Pro Rata _____ %</p> <p><input type="checkbox"/> Lump Sum</p>	<p><b>AMOUNT OF FEDERAL FUNDS</b></p> <p>\$ _____</p>			
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <p>_____</p> <p style="text-align: center;">(Official name of Highway Agency)</p> <p>By _____</p> <p>_____</p> <p style="text-align: center;">(Title)</p> <p>By _____</p> <p>_____</p> <p style="text-align: center;">(Title)</p> <p>By _____</p> <p>_____</p> <p style="text-align: center;">(Title)</p> </td> <td style="width: 50%; border: none; vertical-align: top;"> <p style="text-align: center;"><b>U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION</b></p> <p>By _____</p> <p style="text-align: center;">(Division Administrator)</p> <p>Date executed by Division Administrator _____</p> </td> </tr> </table>			<p>_____</p> <p style="text-align: center;">(Official name of Highway Agency)</p> <p>By _____</p> <p>_____</p> <p style="text-align: center;">(Title)</p> <p>By _____</p> <p>_____</p> <p style="text-align: center;">(Title)</p> <p>By _____</p> <p>_____</p> <p style="text-align: center;">(Title)</p>	<p style="text-align: center;"><b>U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION</b></p> <p>By _____</p> <p style="text-align: center;">(Division Administrator)</p> <p>Date executed by Division Administrator _____</p>	
<p>_____</p> <p style="text-align: center;">(Official name of Highway Agency)</p> <p>By _____</p> <p>_____</p> <p style="text-align: center;">(Title)</p> <p>By _____</p> <p>_____</p> <p style="text-align: center;">(Title)</p> <p>By _____</p> <p>_____</p> <p style="text-align: center;">(Title)</p>	<p style="text-align: center;"><b>U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION</b></p> <p>By _____</p> <p style="text-align: center;">(Division Administrator)</p> <p>Date executed by Division Administrator _____</p>				

Figure 2

<b>TO BE COMPLETED BY FHWA</b>	U.S. Department of Transportation  <b>FEDERAL HIGHWAY ADMINISTRATION</b>	State _____
MONTHLY TRANSACTION NUMBER _____		County _____
PROJECT REPORT NUMBER _____		Project Number _____
MODIFICATION NUMBER _____		

The Project Agreement for the above-referenced project entered into between the undersigned parties and executed by the Division Administrator on \_\_\_\_\_, 19 \_\_\_\_\_ is hereby modified as follows:

	Former Amount	Revised Amount
Estimated total cost of project	\$ _____	\$ _____
Federal funds	\$ _____	\$ _____
Other revisions		

This modification is made for the following reasons:

All other terms and conditions of the Project Agreement will remain in full force and effect.  
This modification is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_

*(Official name of Highway Agency)*

By \_\_\_\_\_

\_\_\_\_\_

*(Title)*

By \_\_\_\_\_

\_\_\_\_\_

*(Title)*

By \_\_\_\_\_

\_\_\_\_\_

*(Title)*

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION**

By \_\_\_\_\_

*(Division Administrator)*

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The proposed amendments would update the Federal-aid project agreement regulation to conform to recent laws, regulations, or guidance and to clarify existing policies. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. The proposed amendments would clarify or simplify procedures used by State highway agencies in accordance with existing laws, regulations, or guidance.

**Executive Order 12612 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive

Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

The information collection requirements associated with this rulemaking in § 630.303 have been approved by the Office of Management and Budget under control number OMB 2125-0529 and expire June 30, 1997. The information collection requirements associated with this rulemaking would update and modify existing requirements to reflect statutory changes to the project agreement process enacted by the ISTEA, streamline the project agreement form and provisions, and allow more versatility in its use.

**National Environmental Policy Act**

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that this action would not have any effect on the quality of the environment.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Parts 630, 635, and 771**

Government contracts, Grant programs—Transportation, Highways and roads, Project agreement procedures.

In consideration of the foregoing, the FHWA proposes to amend Title 23, Code of Federal Regulations, by revising Parts 630, 635, and 771 as set forth below.

Issued on: January 12, 1996.  
Rodney E. Slater,  
*Federal Highway Administrator.*

**PART 630—PRECONSTRUCTION PROCEDURES**

1. The authority citation for part 630 is revised to read as follows and all other authority citations which appear throughout part 630 are removed:

Authority: 23 U.S.C. 105, 106, 109, 110, 115, 315, 320, and 402(a); 23 CFR 1.32; 49 CFR 1.48(b).

**PART 635—[AMENDED]**

2. The authority citation for part 635 is revised to read as follows:

Authority: 23 U.S.C. 101(note), 109, 112, 113, 114, 116, 117, 119, 128, and 315; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601 *et seq.*; 23 CFR 1.32; 49 CFR 1.48(b); sec. 1041(a), Pub. L. 102-240, 105 Stat. 1914.

**§ 630.305 [Redesignated as § 635.127]**

3. Section 630.305 is redesignated as § 635.127.

4. Part 630, subpart C is revised to read as follows:

**Subpart C—Project Agreements**

Sec.  
630.301 Purpose.  
630.303 Preparation of agreement.  
630.305 Modification of original agreement.  
630.307 Agreement provisions.

**§ 630.301 Purpose.**

The purpose of this subpart is to prescribe the procedures for the execution of the project agreement required by 23 U.S.C. 110(a) for Federal-aid projects, except for forest highway projects pursuant to 23 U.S.C. 204, and for non-highway public mass transit projects administered by the Federal Transit Administration.

**§ 630.303 Preparation of agreement.**

(a) The State highway agency (SHA) shall prepare a project agreement for each Federal-aid highway and FHWA planning and research project eligible for Federal-aid funding.

(b) The SHA may develop the project agreement in a format acceptable to both the SHA and the FHWA provided the following are included:

- (1) A description of the project location including State and project termini;
- (2) The Federal-aid project number;
- (3) The phases of work covered by the agreement along with the effective date of authorization for each phase;
- (4) The total project cost and amount of Federal funds under agreement;
- (5) The Federal share expressed as either a pro rata percentage or a lump sum;
- (6) A statement that the State accepts and will comply with the agreement provisions set forth in 23 CFR 630.307; and
- (7) Signatures of officials from both the State and the FHWA and date executed.

(c) The project agreement may be combined with the project authorization required under 23 CFR 630, Subpart A.

(d) The SHA may use an electronic version of the agreement as provided by the FHWA.

(Approved by the Office of Management and Budget under control number 2125-0529)

**§ 630.305 Modification of original agreement.**

(a) When changes are needed to the original project agreement, a modification of agreement shall be prepared.

(b) The SHA may develop the modification of project agreement in a format acceptable to both the SHA and the FHWA provided the following are included:

- (1) The Federal-aid project number and State;
- (2) A sequential number identifying the modification;
- (3) A reference to the date of the original project agreement to be modified;
- (4) The original total project cost and the original amount of Federal funds under agreement;
- (5) The revised total project cost and the revised amount of Federal funds under agreement;
- (6) The reason for the modifications; and,
- (7) Signatures of officials from both the State and the FHWA and date executed.

(c) The SHA may use an electronic version of the modification of project agreement as provided by the FHWA.

**§ 630.307 Agreement provisions.**

(a) The State, through its highway agency, accepts and agrees to comply with the applicable terms and conditions set forth in Title 23, United States Code, Highways, the regulations issued pursuant thereto, the policies and procedures promulgated by the FHWA relative to the designated project in which the FHWA authorized certain work to proceed, and all other applicable Federal laws and regulations.

(b) Federal funds obligated for the project must not exceed the amount agreed to on the project agreement, the balance of the estimated total cost being an obligation of the State. Such obligation of Federal funds extends only to project costs incurred by the State after the FHWA authorization to proceed with the project involving such costs.

(c) The State must stipulate that as a condition to payment of the Federal funds obligated, it accepts and will comply with the following applicable provisions:

(1) *Project for acquisition of rights-of-way.* In the event that actual construction of a road on this right-of-way is not undertaken by the close of the twentieth fiscal year following the

fiscal year in which the project is authorized, the SHA will repay to the FHWA the sum or sums of Federal funds paid to the highway agency under the terms of the agreement.

(2) *Preliminary engineering project.* In the event that right-of-way acquisition for, or actual construction of, the road for which this preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the SHA will repay to the FHWA the sum or sums of Federal funds paid to the highway agency under the terms of the agreement.

(3) *Drug-free workplace certification.* The SHA agrees that it will provide a drug-free workplace by:

(i) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the SHA's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(ii) Establishing an ongoing drug-free awareness program to inform its employees about—

(A) The dangers of drug abuse in the workplace;

(B) The SHA's policy of maintaining a drug-free workplace;

(C) Any available drug counseling, rehabilitation, and employment assistance programs; and

(D) The penalties that may be imposed upon employees for drug abuse violations occurring at the workplace;

(iii) Making it a requirement that each of its employees engaged in the performance of the work covered by the project agreement be given a copy of the statement required by paragraph (c)(3)(i) of this section;

(iv) Notifying its employees in the statement required by paragraph (c)(3)(i) of this section that, as a condition of employment on work covered by the project agreement, the employee will—

(A) Abide by the terms of the statement; and

(B) Notify the employer in writing of his/her conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after such conviction;

(v) Notifying the FHWA Division Administrator in writing, within 10 calendar days after receiving notice under paragraph (c)(3)(iv)(B) of this section from an employee or otherwise receiving actual notice of such conviction. Such notification shall include the employee's position title and the identification number(s) of the project(s) employed on;

(vi) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (c)(3)(iv)(B), with respect to any of its employees so convicted—

(A) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, Public Law 93-112, 87 Stat. 355, as amended; or

(B) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purpose by a Federal, State, or local health, law enforcement, or other appropriate agency;

(vii) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (c)(1) through (c)(5) of this section.

(4) *Suspension and debarment certification.* The SHA agrees that its principals engaged in the performance of the work covered by the project agreement:

(i) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal Department or Agency;

(ii) Have not within a 3-year period preceding the agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (c)(4)(ii) of this section; and

(iv) Have not within a 3-year period preceding the agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(5) *Lobbying certification.* The SHA agrees that:

(i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the SHA, to any person for influencing or attempting to influence an officer or employee of a Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any contract, or modification of any contract covered by the project agreement;

(ii) If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, or an employee of a Member of Congress in connection with work covered by the project agreement, the SHA shall complete and submit to the FHWA Division Administrator Standard Form-LLL,<sup>1</sup> Disclosure Form to Report Lobbying, in accordance with its instructions;

(iii) The language of this certification shall be included in the award documents for all contracts and subcontracts, covered by the project agreement, which exceed \$100,000 and all recipients of such contracts and subcontracts shall be required to certify and disclose accordingly.

#### **PART 635—CONSTRUCTION AND MAINTENANCE [AMENDED]**

5. Subpart A of part 635 is amended by revising § 635.102 to read as follows:

##### **§ 635.102 Definitions.**

As used in this subpart:

*Administrator* means the Federal Highway Administrator.

*Calendar day* means each day shown on the calendar but, if another definition is set forth in the State contract specifications, that definition will apply.

*Certification acceptance* means the alternative procedure which may be used for administering certain highway projects involving Federal funds pursuant to 23 U.S.C. 117.

*Contract time* means the number of workdays or calendar days specified in a contract for completion of the contract work. The term includes authorized time extensions.

*Division Administrator* means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.

*Force account* means a basis of payment for the direct performance of highway construction work with payment based on the actual cost of labor, equipment, and materials furnished and consideration for overhead and profit.

*Formal approval* means approval in writing or the electronic transmission of such approval.

*Incentive/disincentive for early completion* as used in this subpart, describes a contract provision which compensates the contractor a certain amount of money for each day

identified critical work is completed ahead of schedule and assesses a deduction for each day the contractor overruns the incentive/disincentive time. Its use is primarily intended for those critical projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety, traffic maintenance, and road user delay costs.

*Liquidated damages* means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a State highway agency because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

*Local public agency* means any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State highway agency in highway matters.

*Major change or major extra work* means a change which will significantly affect the cost of the project to the Federal Government or alter the termini, character or scope of the work.

*Materially unbalanced bid* means a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Federal Government.

*Mathematically unbalanced bid* means a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

*Public agency* means any organization with administrative or functional responsibilities which are directly or indirectly affiliated with a governmental body of any nation, State, or local jurisdiction.

*Publicly owned equipment* means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations.

*Specialty items* means work items identified in the contract which are not normally associated with highway construction and require highly specialized knowledge, abilities or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract; in general these items are to be limited to minor components of the overall contract.

*State highway agency (SHA)* means that department, commission, board, or

official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to "State highway agency" if the context so implies.

*Workday* means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

#### **PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES**

6. The authority citation for part 771 is revised to read as follows and all other authority citations which appear throughout part 771 are removed:

Authority: 42 U.S.C. 4321 et seq.; 23 U.S.C. 109, 110, 128, 138 and 315; 49 U.S.C. 303(c), 5301(e), 5323, and 5324; 40 CFR part 1500 et seq.; 49 CFR 1.48(b) and 1.51.

##### **§ 771.109 [Amended]**

7. Section 771.109 is amended by adding paragraph (d) to read as follows:

\* \* \* \* \*

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 110, it shall be the responsibility of the State highway agency to ensure that the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless the State requests and receives written Federal Highway Administration approval to modify or delete such mitigation features.

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 52**

[FRL-5321-5]

#### **Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Massachusetts; Change in National Policy Regarding Applicability of Conformity Requirements to Redesignation Requests**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Massachusetts to redesignate the Boston area from nonattainment to attainment

<sup>1</sup> The FHWA Division Office can provide the latest information on the availability of this form.