

■ 2. Section 522.2477 is amended by adding paragraph (d)(1)(i)(E) to read as follows:

**§ 522.2477 Trenbolone acetate and estradiol.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) \* \* \*

(E) 200 mg trenbolone acetate and 20 mg estradiol (one implant consisting of 11 pellets, each of 10 pellets containing 20 mg trenbolone acetate and 2 mg estradiol, and 1 pellet containing 29 mg tylosin tartrate) per implant dose.

\* \* \* \* \*

Dated: January 30, 2004.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 04-3134 Filed 2-12-04; 8:45 am]

BILLING CODE 4160-01-S

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Parts 140, 200, 630, 633, 635 and 640**

**RIN 2125-AF01**

**Contract Administration; Removal of Miscellaneous Obsolete or Redundant Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** Through this final rule the FHWA will remove several regulations that have been superseded by legislation. We are removing sections related to construction engineering costs, administration of Direct Federal Construction Contracts, Interstate maintenance guidance, and the Certification Acceptance program. The changes reflect applicable provisions of title 23, United States Code, as amended by legislation, and avoid any possible redundancy or conflict with other regulations.

**DATES:** This rule is effective February 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Balis, Office of Program Administration, HIPA-30, (202) 493-7302, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366-4928, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

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**Background**

Over time various legislative or policy changes have made sections of title 23 of the Code of Federal Regulations (CFR) obsolete. This rulemaking will remove several regulations that have become obsolete or redundant as a result of various surface transportation statutes and other pertinent laws. Specifically, we believe that the following regulations must be removed or amended as described in the following section-by-section analysis.

**Section-by-Section Discussion**

*Part 140 Subpart B, Construction Engineering Costs*

Section 1305 of the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998, as amended) repealed former 23 U.S.C. 106(c), which contained the 15 percent limitation previously established for Federal-aid reimbursement of construction engineering costs. The limitation for Federal-aid reimbursement of construction engineering costs was established by section 1018(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914, December 18, 1991).

On July 22, 1993, the FHWA amended 23 CFR part 140 to conform with section 1018 of the ISTEA. However, section 1305 of the TEA-21 amended 23 U.S.C. 106 by deleting 23 U.S.C. 106(c), "Limitation on Estimates for Construction Engineering," and substituting a new 23 U.S.C. 106(c), "Assumption by States of Responsibilities of the Secretary." Therefore, 23 CFR 140, Subpart B, is revised to remove the limitation on construction engineering costs.

However, this subpart is not necessary in order for a State to recover these costs. We have determined that 23 CFR 1.11 allows for the reimbursement of "directly attributable and properly allocable" engineering costs incurred by a State or local transportation department for specific highway construction projects. For State or local

transportation departments that have chosen to include construction engineering costs with other overhead costs, section 1212(a) of the TEA-21 amended 23 U.S.C. 302(b) to allow reimbursement of indirect costs through a cost allocation plan approved by the FHWA. Therefore we believe that 23 CFR part 140, Subpart B, is no longer necessary, and may be removed without adversely impacting the ability of the FHWA or the State or local transportation departments to carry out the Federal-aid Highway Program (FAHP).

*Part 200, Title VI Program and Related Statutes—Implementation and Review Procedures*

This subpart is revised to conform with the removal of Part 640, Certification Acceptance. Section 200.13 is removed.

*Part 630, Subpart B, Plans, Specifications and Estimates*

This subpart is revised to conform with the removal of Part 640, Certification Acceptance. Section 630.203 is revised.

*Part 633, Subpart A, Federal-Aid Construction Contracts (Other Than Appalachian Contracts)*

This subpart is revised to conform with the removal of Part 640, Certification Acceptance. Section 633.102(c) is removed and reserved.

*Part 633, Subpart C, Direct Federal Construction Contracts*

Prior to 1984, Federal procurement was done using one of two procedures. The military followed the Defense Acquisition Regulations (DAR) while civilian agencies followed the Federal Procurement Regulations (FPR).

In the Office of Federal Procurement Policy Act of 1974 (Pub. L. 93-400, 88 Stat. 796, August 30, 1974), the Congress ordered that a unified procurement system be developed for the Federal government. The Federal Acquisition Regulations System (FARS) was implemented in 1984. The FHWA is required to comply with FARS when the agency directly procures highway-related design or construction services.

The FHWA issued 23 CFR 633, Subpart C, on June 24, 1974, at 39 FR 22418. This subpart deals primarily with supplementary language for the Standard Form 19A (Labor Standards Provisions) which is an obsolete FPR form. Labor Standards provisions are now covered by FARS clauses in 48 CFR 52.222. Additionally, the remaining requirements contained in Subpart C are covered by current FARS clauses.

Therefore, 23 CFR part 633, subpart C, and Appendix A to subpart C are removed to avoid any conflict with the FARS.

*Part 635, Subpart A, Contract Procedures*

This subpart is revised to conform with the removal of part 640, Certification Acceptance. Sections 635.103 and 635.124 are amended.

*Part 635, Subpart B, Force Account Construction*

This subpart is revised to conform with the removal of part 640, Certification Acceptance. Section 635.202 is amended.

*Part 635, Subpart C, Physical Construction Authorization*

This subpart is revised to conform with the removal of part 640, Certification Acceptance. Section 635.303 is amended.

*Part 635, Subpart D, General Material Requirements*

This subpart is revised to conform with the removal of part 640, Certification Acceptance. Section 635.405 is amended.

*Part 635, Subpart E, Interstate Maintenance Guidelines*

Section 1306(a) of the TEA-21 removed 23 U.S.C. 109(m) which contained the requirement for Interstate maintenance guidelines. Additionally, TEA-21, section 1107 revised 23 U.S.C. 119 to create the Interstate Maintenance Program. Section 116 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689), codified as 23 U.S.C. 109(m) and 119(b), required the FHWA to issue guidelines that would ensure the Interstate System was being maintained appropriately. The legislation also required that we receive an annual certification from each State transportation department that the Interstate highways within the State were being maintained. However, sections 1306(a) and 1107 of the TEA-21 eliminated the requirements for both Interstate Maintenance guidelines and the annual certification; therefore, 23 CFR part 635, subpart E, is now obsolete and is removed from the regulations. The removal of the Interstate maintenance guidelines and annual certification does not change the States' responsibility for maintenance under 23 CFR 1.27, nor does it affect the FHWA's role in ensuring that adequate maintenance is being performed.

*Part 640, Certification Acceptance*

Section 1601 of the TEA-21 eliminated the certification acceptance program implemented by this part; therefore, part 640 is removed from the regulation without adverse impact to the FAHP. For conformity within 23 CFR, references to the certification acceptance program are removed from 23 CFR 200.13, 23 CFR 630.203, 23 CFR 633.102(c), 23 CFR 635.103, 635.124(b), 635.202, 635.303, and 635.405.

**Rulemaking Analyses and Notices**

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the prior notice and opportunity for public comment requirements if it finds, for good cause, that the requirements are impracticable, unnecessary, or contrary to the public interest. The issuance of this rule without prior notice and opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(3)(B). Seeking public comment is unnecessary and contrary to the public interest. This action is merely a ministerial action to remove obsolete regulations from the CFR and the removal of these regulations will have no substantive impact. Therefore, the FHWA does not anticipate receiving meaningful comments on a proposal to remove these provisions from the CFR. Prior notice is therefore unnecessary, and it would be contrary to the public interest to delay unnecessarily this effort to eliminate outdated rules. Furthermore, the FHWA believes that because the underlying statutory authority for these regulations no longer exist, we are eliminating any confusion that may be caused by their existence in the CFR.

The APA also allows agencies, upon finding of good cause, to make a rule effective immediately upon publication (5 U.S.C. 533(d)(3)). For the same reasons discussed above, the agency believes good cause exists for making this action effective immediately upon publication.

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

We have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 nor is it significant within the meaning of Department of Transportation regulatory policies and procedures. We anticipate that the economic impact of this rulemaking will be minimal. The removal of 23 CFR part 140, subpart B, and 23 CFR part 633, subpart C, eliminates redundancy and the removal of part 635, subpart E, and

23 CFR part 640 conforms with TEA-21. For conformity within the regulations, obsolete references to 23 CFR part 640 are removed from 23 CFR parts 200, 630, 633, and 635.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601-612), we have evaluated the effects of this action on small entities and have determined that the action will not have a significant economic impact on a substantial number of small entities. Deletion of these regulations will eliminate redundancy and possible conflicts within the regulations. Administration of Federal-aid highway construction projects by small entities will not be affected by the deletions. For these reasons, we certify that this action would not have a significant economic impact on a substantial number of small entities.

**Unfunded Mandates Assessment**

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48, March 22, 1995) as it will not result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector (2 U.S.C. 1532). This rule simply deletes obsolete and redundant regulatory provisions.

**Executive Order 13132, Federalism**

The FHWA has analyzed this rule in accordance with the principles and criteria of Executive Order 13132, dated August 4, 1999. We have determined that this action will not have a substantial direct effect on the States. Since this rule is intended only to remove obsolete or redundant regulations from title 23 of the Code of Federal Regulations, we have determined that this rule does not have federalism implications.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), the FHWA must obtain approval from the Office of Management and Budget (OMB) for each collection of information we conduct, sponsor, or require through regulations. Since we do not seek to collect any information

through this rule, the requirements of the PRA do not apply.

#### National Environmental Policy Act

We have analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and have determined that it would not have any effect on the quality of the environment.

#### Executive Order 13175 (Tribal Consultation)

We have analyzed this rule under Executive Order 13175, dated November 6, 2000, and we believe that our action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

#### Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that this rule is not a significant energy action under that order since it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution or use of energy. Therefore, a Statement of Energy Effects is not required.

#### Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Executive Order 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not concern an environmental risk to health or safety that might disproportionately affect children.

#### Executive Order 12630 (Taking of Private Property)

This rule will not result in a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 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.

#### 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. You can use the RIN contained in the heading of this document to cross reference this action with the Unified Agenda.

#### List of Subjects

##### 23 CFR Part 140

Bonds, Claims, Grant programs—transportation, Highways and roads, Railroads.

##### 23 CFR Part 200

Civil rights, Highways and roads.

##### 23 CFR Part 630

Bonds, Government contracts, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

##### 23 CFR Part 633

Government contracts, Grant programs—transportation, Highways and roads.

##### 23 CFR Part 635

Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

##### 23 CFR Part 640

Government procurement, Grant programs—transportation, Highways and roads.

Issued on: February 6, 2004.

#### Mary E. Peters,

*Federal Highway Administrator.*

■ Under the authority of title 23, United States Code, and as discussed in the preamble, the FHWA amends, title 23, Code of Federal Regulations, parts 140, 200, 630, 633, 635, and 640 to read as follows:

#### PART 140—[AMENDED]

■ 1. The authority citation for part 140 continues to read as follows:

**Authority:** 23 U.S.C. 101(e), 106, 109(e), 114(a), 120(g), 121, 122, 130, and 315; and 49 CFR 1.48(b).

#### Subpart B—[Removed and Reserved]

■ 2. Remove and reserve part 140, subpart B.

#### PART 200—[AMENDED]

■ 3. The authority citation for part 200 continues to read as follows:

**Authority:** Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619; 42 U.S.C. 4601 to 4655; 23 U.S.C. 109(h); 23 U.S.C. 324.

#### § 200.13 [Removed]

■ 4. Remove § 200.13.

#### PART 630—[AMENDED]

■ 5. The authority citation for part 630 continues to read as follows:

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

■ 6. Revise § 630.203 to read as follows:

#### § 630.203 Applicability.

The provisions of this regulation apply to all highway construction projects financed in whole or in part with Federal-aid highway funds and to be undertaken by a State or political subdivision.

#### PART 633—[AMENDED]

■ 7. The authority citation for part 633 continues to read as follows:

**Authority:** 23 U.S.C. 114 and 315; 49 CFR 1.48.

#### § 633.102 [Amended]

■ 8. In § 633.102, remove and reserve paragraph (c).

#### Subpart C to Part 633—[Removed]

■ 9. Remove subpart C to part 633 and Appendix A to subpart C of part 633.

#### PART 635—[AMENDED]

■ 10. The authority citation for part 635 continues to read as follows:

**Authority:** 23 U.S.C. 101(note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041 (a), Pub. L. 102-240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b)

■ 11. Revise § 635.103 to read as follows:

#### § 635.103 Applicability.

The policies, requirements, and procedures prescribed in this subpart shall apply to all Federal-aid highway projects.

■ 12. Revise paragraph (b) of § 635.124 to read as follows:

**§ 635.124 Participation in contract claim awards and settlements.**

\* \* \* \* \*

(b) The FHWA shall be made aware by the STD of the details of the claim at an early stage so that coordination of efforts can be satisfactorily accomplished. It is expected that STDs will diligently pursue the satisfactory resolution of claims within a reasonable period of time. Claims arising on exempt non-NHS projects should be processed in accordance with the State's approved Stewardship Plan.

\* \* \* \* \*

- 13. Revise § 635.202 to read as follows:

**§ 635.202 Applicability.**

This subpart applies to all Federal-aid and other highway construction projects financed in whole or in part with Federal funds and to be constructed by a State transportation department or a subdivision thereof in pursuant of agreements between any other State transportation department and the Federal Highway Administration (FHWA).

- 14. Revise § 635.303 to read as follows:

**§ 635.303 Applicability.**

The provisions of this subpart are applicable to all Federal-aid highway construction projects.

- 15. Revise § 635.405 to read as follows:

**§ 635.405 Applicability.**

The requirements and procedures prescribed in this subpart apply to all contracts relating to Federal-aid highway projects.

**Subpart E to Part 635—[Removed]**

- 16. Remove subpart E to part 635.

**PART 640—[REMOVED]**

- 17. Remove part 640.

[FR Doc. 04-3273 Filed 2-12-04; 8:45 am]

BILLING CODE 4910-22-P

**PENSION BENEFIT GUARANTY CORPORATION****29 CFR Parts 4022 and 4044****Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits

Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in March 2004. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**EFFECTIVE DATE:** March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during March 2004, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during March 2004, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during March 2004.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 4.10 percent for the first 20 years following

the valuation date and 5.00 percent thereafter. These interest assumptions are unchanged from those in effect for February 2004.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for February 2004) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during March 2004, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects***29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

- In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

**PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS**

- 1. The authority citation for part 4022 continues to read as follows: