

impact of this final rule. As a result, no final regulatory flexibility analysis was prepared.

#### List of Subjects in 15 CFR Part 90

Administrative practice and procedure; Census data; State and local governments.

■ For reasons discussed in the preamble, the Census Bureau is amending 15 CFR Part 90 as follows:

#### PART 90—PROCEDURE FOR CHALLENGING CERTAIN POPULATION AND INCOME ESTIMATES

■ 1. The authority citation for Part 90 continues to read as follows:

**Authority:** 13 U.S.C. 4.

■ 2. Effective February 3, 2010, PART 90—PROCEDURE FOR CHALLENGING CERTAIN POPULATION AND INCOME ESTIMATES is stayed indefinitely.

Dated: December 22, 2009.

**Robert M. Groves,**

*Director, Bureau of the Census.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 635

[FHWA Docket No. FHWA-2009-0029]

RIN 2125-AF31

#### Discontinuance of Form FHWA-47

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

**ACTION:** Final rule.

**SUMMARY:** This final rule eliminates regulations which require contractors on National Highway System (NHS) projects of \$1 million or more to submit Form FHWA-47. Since the FHWA no longer uses this information, the FHWA is eliminating this reporting requirement.

**DATES:** This rule is effective February 3, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert S. Wright, Office of Program Administration, (202) 366-4630; or Mr. Michael Harkins, Office of the Chief Counsel (202) 366-4928, Federal Highway Administration, 1200 New Jersey Ave., SE., 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:**

#### Electronic Access and Filing

You may retrieve a copy of the notice of proposed rulemaking (NPRM), comments submitted to the docket, and a copy of this final rule online through the Federal Rulemaking portal at: <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document also may be downloaded from the Office of the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

#### Background

During a 2003 Government Accountability Office (GAO) review of the States' highway construction costs, the GAO reviewed the FHWA's bid price data collection requirements. In a November 2003 report, GAO made recommendations to FHWA to review the usefulness and accuracy and/or under reporting of the bid price data collected.<sup>1</sup> In response to GAO's review the FHWA Office of Infrastructure, Office of Program Administration, in collaboration with the Office of Transportation Policy Studies, hired a consultant to review the need, quality, and value of the current data collections system in partnership with the American Association of State Highway and Transportation Officials. This review also included data collected for material and labor prices and bid tabulation. As a result, FHWA has decided to discontinue the reporting requirements for the Form FHWA-45, Bid Price Data; Form FHWA-47, Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds; and Form FHWA-810, Bid Tabulation Data. This decision is documented in a May 22, 2007, policy memorandum (see <http://www.fhwa.dot.gov/federalaid/052207.cfm>) as well as in a change to the Federal-Aid Policy Guide through Transmittal 38, dated July 3, 2007 (see <http://www.fhwa.dot.gov/legsregs/directives/fapag/1trans38.htm>).

Form FHWA-45, Bid Price Data, was collected on NHS projects over \$500,000. Form FHWA-45 served as a means to compute the highway construction bid price index, which is published in the document "Price Trends for Federal-aid Highway

Construction."<sup>2</sup> The data were used in our "Highway Statistics"<sup>3</sup> publication and by other outside sources. With the discontinuance of the Form FHWA-45, the future of FHWA's construction price trends reporting has been temporarily suspended. Currently, the FHWA has a contract for the development of a new highway construction cost indexing system, which will involve the use of the Oman System Bid Tabs data. This system utilizes construction price data extracted directly from State DOT data bases. Targeted completion for the new system is early in calendar year 2010.

Form FHWA-810, Bid Tabulation Data, was collected on all NHS projects. The data from the Form FHWA-810 have been used to compute national summaries on the largest contract awards and contract size statistics. The data were also used to produce State-by-State summaries on contracts awards, number of bids, and average number of bids.

Section 635.126 of title 23, Code of Federal Regulations, requires Form FHWA-47, Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds, which is the subject of this final rule, to be collected on all NHS projects over \$1,000,000. Form FHWA-47 served as a means to collect data related to the quantities of materials, supplies, and labor used for various types of highway construction. The data reported on this form were used primarily to compute usage factors for these various materials, supplies, and labor. These factors were used to determine the economic impacts of cuts or increases in the cost of Federal-aid highway construction.

On June 23, 2009, FHWA published in the **Federal Register** at 74 FR 29634 a NPRM proposing to delete section 635.126 of title 23, Code of Federal Regulations, since the FHWA no longer intends to use the information submitted through Form FHWA-47. The FHWA received one comment to the docket from a member of the public in response to the NPRM. This commenter was against the discontinuance of Form FHWA-47 because the commenter believes it would hold contractors accountable for their work, the timeline of their work, the products and materials that go into their work for safety reasons, and the cost of their work. The FHWA disagrees. While FHWA does not disagree that all contractors should be held accountable

<sup>2</sup> See Price Trends for Federal-aid Highway Construction (<http://www.fhwa.dot.gov/programadmin/pricetrends.cfm>).

<sup>3</sup> See Highway Statistics (<http://www.fhwa.dot.gov/policy/ohpi/hss/hsspubs.cfm>).

<sup>1</sup> See GAO-04-113R. (<http://www.gao.gov/new.items/d04113r.pdf>)

for their work, the purpose of the FHWA-47 was not to serve as a tool to reinforce accountability. Its purpose, as noted in the earlier background paragraph, was to provide information on material usage factors for all projects on the NHS that were \$1 million or more. This information was used by vendors, private sector engineers, state DOTs, etc., for estimators to determine various trends for construction. However, the rate of submitting the forms declined over the years and thus rendered the data inaccurate. As noted above, Form FHWA-47 has not been collected by the FHWA since 2007, and the FHWA believes there is little utility in such a data collection activity. As such, this final rule adopts the NPRM without change.

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

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. The enacted change is not anticipated to adversely affect, in any material way, any sector of the economy. The FHWA expects that the enacted change will alleviate confusion and provide policy consistency and clarity at little or no additional expense to public agencies or the motoring public. In addition, the enacted change would not create a serious inconsistency with another agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Therefore, a full regulatory evaluation is not required.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), FHWA has evaluated the effects of this change on small entities and has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### **Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48, March 22, 1995). This proposed action would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any 1 year (2 U.S.C. 1532) period to comply with these changes.

#### **Executive Order 13132 (Federalism)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

#### **Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### **Executive Order 13211 (Energy Effects)**

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

#### **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 do apply to this program.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Form FHWA-47 was previously approved under OMB Control Number 2125-0033 in July 1998, and was associated with 5 burden hours. We allowed this control number to expire because we no longer needed the information. Since this action eliminates a current reporting requirement and does not require any

entity to write or submit new reports, the FHWA request for approval from OMB under the provisions of the PRA is not required.

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

This action meets 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)**

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

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

The FHWA does not anticipate that this action would effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### **National Environmental Policy Act**

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that it 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 Part 635**

Contract procedures, Force account construction, Physical construction authorization, General material requirements.

Issued on: December 21, 2009.

**Victor M. Mendez,**  
Administrator.

■ In consideration of the foregoing, the FHWA amends chapter I of title 23, Code of Federal Regulations, as set forth below:

## PART 635—CONSTRUCTION AND MAINTENANCE

■ 1. The authority citation of part 635 continues to read as follows:

**Authority:** Sec. 1503 of Public Law 109–59, 119 Stat. 1144; 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), Public Law 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

### § 635.126 [Removed and Reserved]

■ 2. Remove and reserve § 635.126.

[FR Doc. E9–31106 Filed 12–31–09; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[TD 9478]

RIN 1545–B186

#### Amendments to the Section 7216 Regulations—Disclosure or Use of Information by Preparers of Returns

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations that provide rules relating to the disclosure and use of tax return information by tax return preparers. These regulations provide updated guidance affecting tax return preparers regarding the use of information related to lists for solicitation of tax return business; the disclosure or use of statistical compilations of data under section 7216 of the Internal Revenue Code (Code) by a tax return preparer in connection with, or in support of, a tax return preparer's tax return preparation business, including identification of additional limited circumstances when a tax return preparer who compiles statistical information may disclose the compilation without taxpayer consent, and the placement of additional restrictions on the content of the compilation that may be disclosed under those circumstances without taxpayer consent; and the disclosure or use of information for the purpose of performing conflict reviews. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on January 4, 2010.

*Applicability Date:* For date of applicability, see § 301.7216–2T(s).

**FOR FURTHER INFORMATION CONTACT:** Molly K. Donnelly, (202) 622–4940 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document amends 26 CFR part 301 to provide modified rules relating to the ability of a tax return preparer to use tax return information for the purposes of compiling, maintaining and using lists for solicitation of tax return business under § 301.7216–2(n), disclose and use statistical compilations of data described in § 301.7216–1(b)(3)(i)(B) under § 301.7216–2(o), and disclose and use tax return information for the purpose of performing conflict reviews under § 301.7216–2(p), without taxpayer consent. These three paragraphs are being modified to expand the ability of tax return preparers to disclose or use certain limited tax return information under specific and limited circumstances in a manner that is expected to benefit taxpayers, tax return preparers, and the general public, as more fully described in the Explanation of Provisions section of this preamble. One set of these modifications, those to § 301.7216–2(o), are being made following the issuance of Notice 2009–13 and the receipt of comments submitted in response to that Notice, while the modifications to the other two paragraphs are being made as a result of the Treasury Department's and the IRS's efforts to regularly review the effect of the recently issued final regulations on taxpayers and tax return preparers. In the accompanying and cross-referenced notice of proposed rulemaking, the Treasury Department and the IRS request comments on the proposed rules from all interested parties.

On January 7, 2008, the Treasury Department and the IRS issued final regulations under section 7216 (TD 9375) (73 FR 1058) applicable to disclosures or uses of tax return information occurring on or after January 1, 2009. The final regulations replaced previously issued final regulations that remained applicable to disclosures or uses of tax return information occurring prior to January 1, 2009. The final regulations included § 301.7216–1(b)(3)(i)(B) which, for disclosures and uses of tax return information occurring on or after January 1, 2009, provides that tax return information includes statistical compilations of tax return information.

The final regulations included § 301.7216–2(n), which provides that tax return preparers may use, without taxpayer consent, certain limited taxpayer contact information constituting tax return information for the purposes of compiling, maintaining, and using lists for the solicitation of tax return business, incorporating its predecessor, § 301.7216–2(m), but providing a minor expansion of the contact information allowed to be used. The final regulations included the addition of new § 301.7216–2(o), which describes the limited circumstances when a tax return preparer may use tax return information to produce statistical compilations, and when the preparer may use or disclose the produced statistical compilation without written consent. The final regulations included § 301.7216–2(p), which provides that tax return preparers may disclose and use tax return information without taxpayer consent in the performance of quality or peer reviews, incorporating its predecessor, § 301.7216–2(o), with only minor, non-technical adjustments.

The Treasury Department and the IRS subsequently issued Notice 2009–13 (2009–6 IRB 447 (February 9, 2009)) (see § 601(d)(2)(ii)(b)), to provide interim guidance relating to the ability of a tax return preparer to disclose and use statistical compilations of anonymous tax return information in support of a tax return preparer's tax return preparation business. The Notice provides guidance on the tax return information a tax return preparer may use to compile anonymous statistical information, and on the circumstances when the tax return preparer may disclose the anonymous statistical information without taxpayer consent. Notice 2009–13 sets forth rules to be applied by the Treasury Department and the IRS during 2009 while they consider whether the interim guidance should be adopted by regulations or further modified, taking into account public comments submitted in response to the Notice.

Written comments were received in response to the Notice. All comments were considered and are available for public inspection upon request. This preamble summarizes the responsive comments received by the Treasury Department and the IRS.

These temporary regulations modify the rules under §§ 301.7216–2(n), 301.7216–2(o), and 301.7216–2(p), and supersede the interim guidance provided by Notice 2009–13.