



## **Federal Highway Administration**

### **23 CFR Part 633**

**[Docket No. FHWA-2025-0012]**

**RIN 2125-AG19**

## **Rescinding Requirements Regarding Required Contract Provisions for Federal-Aid Construction Contracts (Other than Appalachian Contracts)**

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Final Rule.

**SUMMARY:** FHWA is rescinding the rule and certain regulations issued on October 2, 1987, Required Contract Provisions, because they are no longer necessary.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. James DeSanto, Office of Infrastructure, (614) 357-8515, james.desanto@dot.gov; or Mr. William Winne, Office of Chief Counsel, (202) 366-1397, william.winne@dot.gov, Federal Highway Administration, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

### **SUPPLEMENTARY INFORMATION:**

#### **Electronic Access and Filing**

This document, as well as the notice of proposed rulemaking (NPRM), and all comments received may be viewed online through the Federal eRulemaking portal at [www.regulations.gov](http://www.regulations.gov). The Website is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: [www.federalregister.gov](http://www.federalregister.gov) and the U.S. Government

Publishing Office's Website at: [www.GovInfo.gov](http://www.GovInfo.gov).

## **Background**

FHWA is rescinding portions of the rule issued on October 2, 1987, Required Contract Provisions for Federal-Aid Construction Contracts (Other than Appalachian Contracts), at 52 FR 36920, as amended on February 13, 2004, by 69 FR 7118, amending 23 CFR part 633 subpart A. The rule prescribed the method of inclusion of construction contract provisions required by existing statute and regulations. 23 CFR 633.101. Under the regulation, FHWA required Form FHWA-1273, "Required Contract Provisions, Federal-aid Construction Contracts" be physically incorporated in each Federal-aid highway construction contract, other than Appalachian construction contracts (23 CFR 633.102(b)) and any lower tier subcontracts that may be made (23 CFR 633.102(e)).

On May 30, 2025, at 90 FR 22876, FHWA published an NPRM to rescind the regulation requiring the use of Form FHWA-1273 and sought comments on all aspects of that proposal. FHWA received one comment in support of its proposal and now adopts the proposal without change.

FHWA finds the requirement to include Form FHWA-1273 unnecessary. To the extent provisions under other statutes or regulations currently listed in Form FHWA-1273 are required to be included in a construction contract, those provisions still must be included in the contract. Further, FHWA is not eliminating Form FHWA-1273 and will continue to make updates as necessary due to changes in applicable statutes or regulations. To the extent recipients, subrecipients, and contractors elect to use Form FHWA-1273 to satisfy their obligations, FHWA intends allowing them to continue to do so. FHWA is merely eliminating the requirement that those entities must use Form FHWA-1273 to fulfill these obligations. Those entities may choose other ways, besides incorporating Form FHWA-1273, if they find such alternatives preferable.

## **Rulemaking Analyses and Notices**

**A. Executive Orders 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures**

This rule does not meet the criteria of a “significant regulatory action” under Executive Order (E.O.) 12866, as amended by E.O. 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This rule removes the requirement that Form FHWA-1273, which itself contains contract provisions required by statute and regulation, be physically incorporated into construction contracts. It does not remove the requirement for contract provisions within Form FHWA-1273 that are required by statute and regulation to be incorporated into construction contracts. As such, while FHWA is removing the requirement to use a single mechanism to ensure compliance, it is not removing the underlying requirements. For that reason, FHWA believes any monetary benefits or costs to this rule would be minimal.

These changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

**B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)**

This final rule is an E.O. 14192 deregulatory action. Cost-savings are not quantified.

**C. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601–612) (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996; 5 U.S.C. 601 *et seq.*), Agencies must prepare and make available for public comment a

regulatory flexibility analysis describing the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an Agency or an appropriate designee certifies the rule will not have a significant economic impact on a substantial number of small entities. FHWA has concluded and hereby certifies this rule would not have a significant economic impact on a substantial number of small entities; therefore, an analysis is not included. This rescission would only rescind the requirement to incorporate Form FHWA-1273 in construction contracts. It does not add or remove any requirements referenced in Form FHWA-1273 that may continue to be applicable.

#### **D. Unfunded Mandates Reform Act**

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. No. 104-4, 109 Stat. 48) for State, local and Tribal governments, or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **E. Executive Order 13132 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in E.O. 13132. FHWA has determined this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. FHWA has also determined this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

#### **F. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. This rule is deregulatory and so would not impose any additional information collection requirements.

## **G. National Environmental Policy Act**

FHWA has analyzed this rule pursuant to the National Environmental Policy Act (NEPA) and has determined it is categorically excluded under 23 CFR 771.117(c)(2), which applies to the promulgation of rules, regulations, and directives. Categorically excluded actions meet the criteria for categorical exclusions under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA. This rule removes the requirement to physically incorporate Form FHWA -1273 in construction contracts. It does not affect the requirements referenced in Form FHWA -1273 that may otherwise be applicable. FHWA does not anticipate any adverse environmental impacts from this rule, and no unusual circumstances are present under 23 CFR 771.117(b).

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

E.O. 13175 requires Federal Agencies to consult and coordinate Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FHWA has assessed the impact of this rule on Indian tribes and determined this rule would not have tribal implications requiring consultation under E.O. 13175.

## **I. Regulation Identifier Number**

A Regulation Identifier 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 the spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**J. Rulemaking Summary, 5 U.S.C. 553(b)(4)**

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found at [www.regulations.gov](http://www.regulations.gov), under the docket number.

**List of Subjects in 23 CFR part 633**

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

Issued in Washington, D.C., under authority delegated in 49 CFR 1.85.

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Sean McMaster  
Administrator  
Federal Highway Administration

**PART 633—[REMOVED AND RESERVED]**

For the reasons stated in the preamble, under the authority of 23 U.S.C. 114 and 315, 49 CFR 1.48, FHWA removes and reserves 23 Code of Federal Regulations part 633.

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