

315; 49 CFR 1.48, FHWA proposes to remove and reserve 23 Code of Federal Regulations part 633, subpart A.

[FR Doc. 2025–09728 Filed 5–27–25; 4:15 pm]

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 633

[Docket No. FHWA–2025–0013]

RIN 2125–AG11

#### Rescinding Requirements Regarding Federal-Aid Contracts for Appalachian Contracts

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FHWA is proposing to rescind the rule and regulations issued on September 30, 1974, Federal-Aid Contracts (Appalachian Contracts).

**DATES:** Comments must be received on or before June 30, 2025.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony DeSimone, Office of Infrastructure, (317) 226–5307, [anthony.desimone@dot.gov](mailto:anthony.desimone@dot.gov); or Mr. David Serody, Office of the Chief Counsel, (202) 366–4241, [david.serody@dot.gov](mailto:david.serody@dot.gov), Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE, Washington, DC 20590, or submit electronically at [www.regulations.gov](http://www.regulations.gov). All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit [www.regulations.gov](http://www.regulations.gov).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

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##### Background

FHWA is proposing to rescind the rule issued on September 30, 1974, Federal-Aid Contracts (Appalachian Contracts), via 39 FR 35146, as amended on October 21, 1975, by 40 FR 49084 and on March 1, 1976, by 41 FR 8769, amending 23 CFR part 633 subpart B. The rule proposed for rescission provides policies and procedures for administering projects and funds for the Appalachian Development Highway System (ADHS) and Appalachian local access roads. 23 CFR 633.201. The FHWA proposes to rescind the entire subpart B of part 633 and seek comment on all aspects of that proposal.

This subpart concerns projects for the ADHS and Appalachian local access roads. Under 40 U.S.C. 14501, the Secretary of Transportation may assist in the construction of the ADHS and local access roads serving the Appalachian region, and Congress has appropriated funds for this purpose. While such Appalachian projects have been, are being, and likely will continue to be constructed, FHWA does not find it necessary to maintain the current regulations to administer such construction. This subpart is being proposed for rescission because it is substantially outdated and duplicative of other statutory and regulatory sections. The FHWA discusses the reasons for removing each section separately below.

##### Section-by-Section Analysis

###### *Section 633.201, 633.202—Purpose and Definitions*

As detailed more below, FHWA is proposing to remove the substantive provisions within 23 CFR part 633, subpart B. With those provisions removed, FHWA finds it unnecessary to keep §§ 633.201 and 633.202.

###### *Section 633.203—Applicability of Existing Laws, Regulations, and Directives*

Section 633.203, title 23, Code of Federal Regulations states that the provisions of title 23, U.S.C. that are applicable to the construction and maintenance of Federal-aid primary and secondary highways and which the Secretary of Transportation determines are not consistent with the Appalachian Regional Development Act of 1965 (Act) (Pub. L. 89–4) shall apply to the development highway system and the local access roads. This merely restates 40 U.S.C. 14501(g)(2) and is therefore unnecessary. Further, § 633.203 states that title 23 of the CFR and directives implementing applicable provisions of title 23, U.S.C., where not inconsistent with the Act, apply to the development highway system and the local access roads. Given that certain provisions of title 23, U.S.C. apply under 40 U.S.C. 14501(g)(2), FHWA believes it apparent that regulations implementing those provisions would also apply. The FHWA therefore finds this restatement unnecessary and proposes to remove § 633.203.

###### *Section 633.204—Fiscal Allocation and Obligations*

Section 633.204(a) states that Federal assistance shall not exceed 70 percent of the costs of a project. This provision is outdated; under 40 U.S.C. 14501(e), the Federal share shall not exceed 80 percent of the cost of a project.<sup>1</sup> The FHWA further does not believe it necessary to include a regulatory provision that would merely repeat 40 U.S.C. 14501(e). Similarly, § 633.204(b) states that the FHWA Division Administrator's authorization to proceed with proposed work shall establish obligation of Federal funds for a particular project. Again, FHWA finds this unnecessary to include. Per 40 U.S.C. 14501(g)(1), 23 U.S.C. 106(a) applies to the development system and the local access roads. Per 23 U.S.C. 106(a)(3), the execution of the project agreement is deemed a contractual obligation of the Federal Government. It is typical FHWA policy for authorization to proceed either through or after the execution of the project agreement. See 23 CFR 630.106(a)(2).

<sup>1</sup> Congress has further enacted separate provisions dealing with the Federal share for the ADHS under certain circumstances. See Section 1528 of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141); Section 1435 of the Fixing America's Surface Transportation Act (Pub. L. 114–94). The FHWA believes this indicates the flaws in having a regulatory provision stating the Federal share, rather than relying on the underlying statutory authority.

Thus, FHWA believes that § 633.204(b) merely restates statute and FHWA practice and FHWA is proposing to remove this provision.

#### *Section 633.205—Prefinancing*

Section 633.205(a) concerns projects that may be prefinanced and references the requirements in section 201(h) of the Act. Section 201(h) of the Act is codified at 40 U.S.C. 14501(f), which is more detailed than § 633.205(a).<sup>2</sup> The FHWA therefore proposes to remove § 633.205(a). Section 633.205(b) states that certain actions for projects using interim State financing must include the statement “There is no commitment or obligation on the part of the United States to provide funds for this highway improvement. However, this project is eligible for Federal reimbursement when sufficient funds are available from the amounts allocated by the Appalachian Regional Commission.” While 40 U.S.C. 14501(f)(2) states that 40 U.S.C. 14501(f)(1) does not commit or obligate the Federal Government to provide amounts for segments of development highways constructed under this subsection, it does not require that any statement be specifically included. The FHWA believes such a statement is unnecessary and that current FHWA processes can determine which projects are being constructed with interim State financing and is proposing to remove § 633.205(b).

#### *Section 633.206—Project Agreements*

Section 633.206(a) requires project agreements for projects under the Appalachian program to contain specific language. Under § 633.206(a)(1), the State Department of Transportation (State DOT) is required to state that it agrees to comply with applicable laws, regulations, and policies and procedures. FHWA finds such a statement unnecessary; the State DOT must comply with applicable laws, regulations, and policies and procedures because they are applicable. Under § 633.206(a)(2), the project agreement must include specific language that projects constructed on a section of an Appalachian development route not already on the Federal-Aid Primary System must be added to the system prior to, or upon completion of, construction accomplished with Appalachian funds. This merely

reiterates 40 U.S.C. 14501(c), and FHWA finds it unnecessary to specifically include a statement in a project agreement repeating applicable law. Similarly, § 633.206(b) requires prefinanced projects to include provisions in their project agreements repeating the requirements of 40 U.S.C. 14501(f). Again, FHWA finds this addition unnecessary and is therefore proposing to remove § 633.206.

#### *Section 633.207—Construction Labor and Materials*

Section 633.207(a) states that construction and materials “shall be in accordance with the State highway department standard construction specifications approved for use on Federal-aid primary projects and special provisions and supplemental specifications amendatory thereto approved for use on the specific projects.” The FHWA considers this provision as unnecessary, given that it reiterates the construction standard requirements in 23 CFR part 625 and the materials standards in 23 CFR part 635, subpart D.

Section 633.207(b) states that 23 U.S.C. 324, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), and implementing regulations at 49 CFR part 21 apply to contracts listed in Appendix A to Subpart B of Part 633. As described below, FHWA proposes to remove Appendix A and therefore similarly proposes to remove § 633.207(b). Similarly, §§ 633.207(c) and (d) only state that Appendix B and C, respectively, must be included in certain contracts. As described below, FHWA is proposing to remove those appendices and thus proposes to remove §§ 633.207(c) and (d). Finally, § 633.207(e) states that the State may give special preference to the use of mineral resource materials native to the Appalachian region. FHWA proposes to remove this provision, as 40 U.S.C. 14501(d)(1) broadly states that States may give special preference to the use of materials and products indigenous to the Appalachian region. As § 633.207(e) is both narrower and repetitive of the statute, FHWA proposes to remove it.

#### *Section 633.208—Maintenance*

Section 633.208 states that maintenance of projects constructed under the Act shall be the responsibility of the State, and that the State can arrange for maintenance by agreement with a local governmental unit. This merely repeats the requirement in 40 U.S.C. 14501(g)(2) that States are required to maintain projects as provided in title 23, U.S.C. Specifically, 23 U.S.C. 116(b) states that it is the duty

of States to maintain, or cause to be maintained, projects they construct using FHWA financial assistance. As § 633.208 is merely repeating otherwise applicable statutes, FHWA proposes to remove it.

#### *Section 633.209—Notices to Prospective Federal-Aid Construction Contractors*

Section 633.209 states that State DOTs must include the notices set forth in Appendix D to Subpart B of Part 633 in all future bidding proposals for Appalachian Development System and Appalachian local access roads construction contracts. As detailed below, FHWA is proposing to remove Appendix D and therefore is proposing to remove § 633.209.

#### *Section 633.210—Termination of Contract*

Under § 633.210, all contracts exceeding \$2,500 must contain suitable provisions for termination by the State, including the manner in which the termination will be affected, and the basis for settlement, and must describe conditions under which the contract may be terminated for default and because of circumstances beyond the control of the contractor. This provision is substantially similar to 23 CFR 635.125(a), although § 635.125(a) applies to contracts exceeding \$10,000. The FHWA sees little reason for Appalachian contracts to be treated differently. Further, as noted above in the discussion of § 633.203, applicable provisions of 23 CFR would continue to apply under this proposal. FHWA therefore proposes to remove § 633.210.

#### *Section 633.211—Implementation of the Clean Air Act and the Federal Water Pollution Control Act*

Section 633.211 currently states that implementing requirements with respect to the Clean Air Act and the Federal Water Pollution Control Act are included in Appendix B to Subpart B of Part 633. As described below, FHWA proposes to remove all of Appendix B and therefore proposes to remove § 633.211 as well, as it just references specific requirements currently found in Appendix B.

#### **Appendix A to Subpart B of Part 633—Types of Contracts to Which the Civil Rights Act of 1964 Is Applicable**

Appendix A to Subpart B of Part 633 states that 23 U.S.C. 324, the Civil Rights Act of 1964, and the implementing regulations at 49 CFR part 21 are applicable to certain contracts awarded by State DOTs, contractors, and first tier subcontractors. Those include construction, planning,

<sup>2</sup> Under 40 U.S.C. 14501(f), States that construct segments of development highways without Federal assistance but in accordance with the procedures and requirements applicable to the construction of segments of Appalachian development highways may ask FHWA and the Appalachian Regional Commission to pay to the State the Federal share of the construction. This is similar to Advance Construction under 23 U.S.C. 115.

research, highway safety, engineering, property management, and fee contracts and other commitments with persons for services incidental to the acquisition of right-of-way. The FHWA does not believe this appendix is necessary, as it only states the applicability of 23 U.S.C. 324, Title VI of the Civil Rights Act of 1964, and DOT's implementing regulations at 49 CFR part 21. The FHWA believes that the extent of these requirements are clear and does not find that there is a reason to specifically lay out their applicability for the Appalachian system versus other Federal-aid projects. Accordingly, FHWA proposes to remove Appendix A.

**Appendix B to Subpart B of Part 633—Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Construction Contracts; Appendix C to Subpart B of Part 633—Additional Required Contract Provisions, Appalachian Development Highway System and Local Access Roads Contracts Other Than Construction Contracts; Appendix D to Subpart B of Part 633—Federal-Aid Proposal Notices**

Appendices B, C, and D to Subpart B of Part 633 are outdated and FHWA does not believe they are necessary to maintain. These appendices list provisions that are required to be included in contracts. To the extent that these provisions are not specifically required by statute or other regulations, FHWA considers it unnecessary and unduly burdensome to specifically detail the language of contract provisions. To the extent that these provisions are required by other statutes and regulations, FHWA does not find it necessary to repeat the mandates of those statutes and regulations in these appendices. Accordingly, FHWA proposes to remove Appendices B, C, and D.

**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 proposed rule does not meet the criteria of a "significant regulatory action" under Executive Order 12866, as amended by Executive Orders 14215 and 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rulemaking under those orders.

This proposed rescission would remove regulations that FHWA believes are outdated, duplicative, and unnecessary. The FHWA believes there

may be some cost savings from this rescission, such as cost savings from not having to include unnecessary contract provisions. The FHWA, however, does not have data on the extent of those savings. The FHWA seeks comments on any impacts that could result from removing the provisions identified in this NPRM.

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 proposed rule is not an E.O. 14192 regulatory action. This rulemaking 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 impacts of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

*C. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA) (5 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 that describes the effect of the rulemaking 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 that the rulemaking will not have a significant economic impact on a substantial number of small entities. FHWA has concluded and hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities; therefore, an analysis is not included. This proposed rescission would only remove requirements that FHWA believes are outdated and unnecessary.

*D. Unfunded Mandates Reform Act*

This proposed rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 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 proposed 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. The FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that 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 Office of Management and Budget (OMB) control number. This proposed rule is deregulatory and so would not impose any additional information collection requirements.

*G. National Environmental Policy Act*

FHWA has analyzed this proposed rule pursuant to the NEPA and has determined that 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 NPRM proposes to rescind an outdated regulation and does not require any new Federal actions or procedures. FHWA does not anticipate any adverse environmental impacts from this proposed rule, and no unusual circumstances are present under 23 CFR 771.117(b).

*H. Executive Order 13175 (Tribal Consultation)*

Executive Order 13175 requires Federal agencies to consult and coordinate with 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 proposed rule on Indian tribes and determined that this proposed rule would not have tribal implications that require consultation under Executive Order 13175.

#### *I. Regulation Identifier Number*

A 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 proposed rule can be found at [regulations.gov](http://regulations.gov), under the docket number.

#### **List of Subjects in 23 CFR Part 633**

Appalachia contracts bidding and implementation, Project funding allocation and obligation, Project agreements, Construction labor and materials, Maintenance.

Issued in Washington, DC, under authority delegated in 49 CFR 1.85.

**Gloria M. Shepherd,**

*Executive Director, Federal Highway Administration.*

For the reasons stated in the preamble, under the authority of 23 U.S.C. 315, FHWA proposes to remove subpart B of part 633

#### **PART 633—REQUIRED CONTRACT PROVISIONS**

##### **Subpart B—[Removed and Reserved]**

- 1. Remove and reserve subpart B, consisting of §§ 633.201 through 633.211 and Appendix A through Appendix D to subpart B of part 633.

[FR Doc. 2025-09721 Filed 5-27-25; 4:15 pm]

**BILLING CODE 4910-22-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Highway Administration**

#### **23 CFR Part 660**

[Docket No. FHWA-2025-0014]

**RIN 2125-AG20**

#### **Rescinding Requirements Regarding the Forest Highway Program**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FHWA proposes to rescind the regulations issued regarding the Forest Highway Program.

**DATES:** Comments must be received on or before June 30, 2025.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE, Washington, DC 20590, or submit electronically at [www.regulations.gov](http://www.regulations.gov). All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit [www.regulations.gov](http://www.regulations.gov).

#### **FOR FURTHER INFORMATION CONTACT:**

Corey Bobba, Office of Federal Lands, (202) 366-9489, [corey.bobba@dot.gov](mailto:corey.bobba@dot.gov); or David Serody, Office of the Chief Counsel, (202) 366-4241, [david.serody@dot.gov](mailto:david.serody@dot.gov), Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

#### **SUPPLEMENTARY INFORMATION:**

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

An electronic copy of this document may also be downloaded from the Office of Federal Register's website 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).

##### **I. General Discussion**

In 1958, Congress codified title 23 of the United States Code (U.S.C.). Public Law 85-767. The Forest Highway Program was codified at 23 U.S.C. 204, along with separate categories for forest development roads and trails (23 U.S.C. 205), park roads and trails (23 U.S.C. 206), parkways (23 U.S.C. 207), Indian reservation roads (23 U.S.C. 208), and

public lands highways (23 U.S.C. 209). Under the system at the time, each program received separate appropriations, which the Secretary of Transportation allocated under a previous version of 23 U.S.C. 202. Per the version of 23 U.S.C. 204 that existed at the time, the Secretary of Transportation was authorized to use funds available for forest highways to pay for the cost of construction and maintenance thereof. On May 1961, the Bureau of Public Roads, the predecessor to FHWA, issued regulations for administering the Forest Highway Program under 23 CFR part 15. See 26 FR 4608. These regulations prescribed rules regarding the forest highway system, the forest highway program, and surveys, construction, and maintenance of forest highways. In 1974, this part was later redesignated 23 CFR part 660, subpart A. See 39 FR 10429 (Mar. 20, 1974).

On January 6, 1983, Congress enacted the Surface Transportation Assistance Act of 1982 (1982 STAA) (Pub. L. 97-424). Section 126(b) of the 1982 STAA revised 23 U.S.C. 204, combining the previously separately codified programs for "forest highways, public lands highways, park roads, parkways, and Indian reservation roads" into a single Federal lands highway program under 23 U.S.C. 204. Under the structure of the 1982 STAA, however, Congress continued to appropriate funds for the programs separately, including for the Forest Highway Program.

On December 18, 1991, Congress enacted the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Section 1032 of ISTEA combined the Forest Highway Program with the public lands highway program; thus, instead of receiving a separate appropriation for forest highways and public lands highways, FHWA would receive a single appropriation for public lands highways, which could then be used on forest highways. In response to these changes, FHWA revised the Forest Highway Program regulations at 23 CFR part 600, subpart A, in 1994, which are the most recent revisions to this subpart. 59 FR 30296 (June 13, 1994).

Congress subsequently modified the Federal lands highway program as part of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141) (July 6, 2012). MAP-21 replaced the single Federal lands highway program under 23 U.S.C. 204 with the Tribal Transportation Program (TTP) (23 U.S.C. 202), Federal Lands Transportation Program (FLTP) (23 U.S.C. 203) and Federal Lands Access Program (FLAP) (23 U.S.C. 204). Under this new model, instead of being