projects required under § 627.1(a) of this part. Consultants or firms should not be retained to conduct studies of their own designs unless they maintain separate and distinct organizational separation of their VE and design sections.

(d) *Funding eligibility.* The cost of performing VE studies is project related and is, therefore, eligible for reimbursement with Federal-aid highway funds at the appropriate pro-rata share for the project studied.

[FR Doc. 97–3758 Filed 2–13–97; 8:45 am]

BILLING CODE 4910–22–P

## 23 CFR Parts 630, 635, and 771

**[FHWA Docket No. 96–3]**

**RIN 2125–AD58**

## Federal-Aid Project Agreement

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

**ACTION:** Final rule.

**SUMMARY:** The FHWA is amending 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 reflect these adjustments. The new procedures provide more flexibility in the format of the agreement document and permit the development of a single document to serve as both the project authorization and project agreement document. Other changes were made to shorten the agreement document and to add clarity to the process.

**EFFECTIVE DATE:** This final rule is effective March 17, 1997.

**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:** The amendments in this final rule are based primarily on the notice of proposed rulemaking (NPRM) published in the January 30, 1996, Federal Register at 61 FR 2973 (FHWA Docket No. 96–3). All comments received in response to this NPRM have been considered in adopting these amendments.

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 and commitments made concerning the project.

Requirements covering project agreements are contained in this final rule. This final rule updates and modifies the existing Federal-aid project agreement regulation to incorporate changes mandated 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. This final rule amends the existing regulation in the following manner and for the reasons indicated below.

*Section 630.301 Purpose*

The statement of purpose is revised with minor changes for clarity.

*Section 630.303 Preparation of Agreement*

This section no longer requires the use of a specific form. Instead, a State has the flexibility to use whatever format is suitable to provide the information required for a project agreement document.

*Section 630.305 Modification of Original Agreement*

A State is still required to prepare a modification to a project agreement as changes occur. However, this section no longer requires the use of a specific form. Instead, a State is allowed to develop its own form for modification of the project agreement, provided it contains necessary information as identified by the regulation.

*Section 630.307 Agreement Provisions*

This section identifies the provisions that must be a part of each agreement. The project agreement has been simplified by eliminating all the boilerplate provisions that are not required from the agreement itself. The provisions that are necessary have been included in this section of the regulation. The simplified project agreement would incorporate, by reference to this section, these provisions into each agreement. The following discussion covers each of the required provisions.

Section 630.307(a) is a general provision under which 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, 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 which cover only a limited feature of title 23, U.S.C.

Section 630.307(b) represents an acknowledgment by the State that it has a financial obligation for the non-Federal share of the cost of the project.

Sections 630.307(c)(1) and (c)(2) contain provisions that implement statutory requirements concerning a State's payback of Federal funds it has received for right-of-way acquisition or preliminary engineering should the project not be advanced within the designated statutory time frames. Paragraph (c)(1), Project for Acquisition of Rights-of-Way, implements the requirement in 23 U.S.C. 108(a) that the agreement between the State and the FHWA for right-of-way acquisition projects shall include a provision that construction shall begin within 20 years. This reflects an amendment to 23 U.S.C. 108(a) resulting from passage of section 1017(a) of the ISTEA.

With regard to paragraph (c)(2), Preliminary engineering project, prior to passage of the ISTEA, an administrative decision by the FHWA required 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. Paragraph (c)(2) reflects the 10-year payback period.

Sections 630.307(c)(3), (c)(4) and (c)(5) contain provisions for a drug-free workplace, suspension/debarment, and lobbying required by 49 CFR 29.630, 49 CFR 29.510 and 49 CFR 20.110, respectively.

According to 49 CFR 29.630(c), a State is allowed to make one yearly certification for the drug-free workplace certification. Although the FHWA has used annual or quarterly program certifications for the others in the past, it was determined that these certifications do not fully comply with the provisions of previously cited requirements in 49 CFR 29.510 and 49 CFR 20.110. Placing language in the project agreement as part of the general provisions provides the separate certification action required for every project. Project-by-project certifications are deemed to fully satisfy the requirements in title 49, CFR, and

constitute the making of the certifications by virtue of signature on the project agreement document.

In the NPRM, the FHWA proposed to remove provision 20, Environmental Impact Mitigation Features, from § 630.307, appendix A, and to move it 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 the National Environmental Policy Act (NEPA)(40 CFR 1505.3). The State Highway agencies would then be required to comply with 23 CFR part 771 through the broad scope of 23 CFR 630.301.

*Section 635.102 Definitions*

Section 635.102 incorporates 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 move of § 630.305 to § 635.127, the definitions contained in § 630.302 (b), (d), (h), (i), and (k) have been inserted in alphabetical order into the definitions currently in this section. The term *Secondary Road Plan* is removed as this plan no longer exists.

*Section 630.305 Agreement Provisions Regarding Overruns in Contract Time*

Section 630.305 has been redesignated as § 635.127. The text of the section remains unchanged.

The FHWA is also making three minor technical changes to 23 CFR part 635, which were not included in the NPRM. Those changes simply involve the removal of the term ''Secondary Road Plan'' in §§ 635.103, 635.124, and 635.126. As in 23 CFR 635.102, these sections need to be updated to reflect the nonexistence of the Secondary Road Plan, which was phased out in the ISTEA. The FHWA believes that prior notice and comment are unnecessary because these changes are not substantive in nature, but merely update 23 CFR part 635 to reflect current law.

Discussion of Comments

Interested persons were invited to participate in the development of this final rule by submitting written comments on the NPRM to FHWA Docket 96–3 on or before April 1, 1996. There were 15 commenters to this docket, all representing State transportation agencies. Ten State transportation agencies specially stated their endorsement of the proposed rewrite of the regulation. The remainder were in agreement with the rewrite and raised items for consideration. A summary of the comments received relative to each proposed amendment follows.

For § 630.301, no comments were received.

Section 630.303 discusses preparation of the project agreement. All commenters were in favor of eliminating from the regulation the specified form for this agreement. One commenter objected to the requirement in proposed § 630.303(b)(5) that the project agreement include information on the Federal share expressed either as a pro rata percentage or lump sum. The FHWA agrees with this comment because the Federal share is established at authorization and does not have to be repeated in the agreement. Therefore, this requirement is not included in the regulation.

In addition, an electronic version of the agreement, as provided by the FHWA, may be used. Two commenters suggested that they also be allowed to provide their own electronic version of the agreement subject to FHWA approval. It is noted that the FHWA version is closely tied to the agency's Fiscal Management and Information System (FMIS). Any alternate electronic form proposed would need to be fully compatible with the FMIS. Use of electronic format also requires acceptance of an electronic signature. The FHWA has established procedures under which electronic signatures, both by State and FHWA officials, can be used for executing project agreements. One State suggested it be allowed to use its own digital signature format. Again, any alternate signature format would have to be compatible with the FMIS.

Section 630.305 discusses preparation of modifications to the project agreement. No specific form is specified, and similar to the project agreement, the FHWA has provided an electronic version to modify project agreements. Again, all commenters were in favor of eliminating from the regulation the specified form for a project agreement modification. Two commenters were concerned about the need to provide a sequential number identifying the modification and the need to provide the revised total project cost and amount of Federal funds under agreement. These two data items have long been required as part of the standard modification of project agreement form. The FHWA's electronic process for modifying a project agreement will automatically assign a sequential number to the modification and determine the new total project cost and amount of Federal funds. If a State chooses to use its own written form, it will need to provide this information. The FHWA believes these two data items are reasonable information to require in tracking agreement changes, and the final rule continues the requirement that these data items be included in a modification to the project agreement. The FHWA recognizes that using the project agreement to modify the cost continues to present problems. This is even more complex and complicated when translated into an electronic version of the agreement. The FHWA will continue to review this situation and will consider issuing additional guidance or undertaking further rulemaking as appropriate.

Section 630.307 identifies provisions that, by reference, must be included in each project agreement. The first provision, § 630.307(a), is a general provision in which the State agrees to comply with the requirements of title 23, United States Code, and the implementing regulations and policies, as well as other applicable Federal laws and regulations such as title VI of the 1964 Civil Rights Act. In the NPRM preamble, the FHWA solicited input on the need to specifically refer to other non-title 23 Federal laws and regulations with which the States must comply. Most commenters on this issue felt that it was not necessary to list the non-title 23 laws and regulations. Many felt that such a listing would become outdated, and that the general statement contained in the first provision, § 630.307(a), referencing these other laws and regulations is sufficient. Based on this input, the FHWA has decided to proceed with § 630.307(a) only providing the general reference to other non-title 23 laws and regulations.

Section 630.307(c) (1) and (2) implement the requirements in 23 U.S.C. 108(a) and 102(b) for payback of Federal-aid funds authorized for right-of-way or preliminary engineering should a project not be advanced within designated time frames. Section 108(a) of title 23, U.S.C., requires payback of Federal funds made available for right-of-way acquisition if the actual construction of the project has not started within 20 years following the fiscal year that Federal funding is made available for right-of-way acquisition. Section 102(b) of title 23, U.S.C., requires payback of Federal funds made available for preliminary engineering if right-of-way acquisition or construction has not started within 10 years after the date that Federal funding is made available for the preliminary engineering.

For these payback requirements, the term ''available'' has been interpreted by the FHWA to mean the fiscal year in which the FHWA authorizes the right-

of-way or preliminary engineering activity. One commenter believes the term ''available'' should instead be interpreted to mean the date the project agreement is executed. The FHWA disagrees. The FHWA's commitment or obligation of Federal funds to a specific project activity occurs at the time that the FHWA authorizes Federal funds for that activity. It is reasonable to equate this authorization action to a point in time that funds are first made available for an activity.

Another commenter suggested that the 10-year payback requirement for preliminary engineering include a provision that would allow extension of this time limit under special circumstances. It is noted that under 23 U.S.C. 108(a), the statute does allow extensions of the 20-year payback limit for right-of-way acquisition projects. However, under 23 U.S.C. 102(b), the statute contains no provision for extensions of the 10-year limit for preliminary engineering. Consequently, the FHWA does not have the authority to establish extensions to the preliminary engineering payback limit.

Sections 630.307(c)(3), (c)(4), and (c)(5) cover certifications for a drug-free workplace, suspension/debarment, and lobbying required by 49 CFR 29.630, 49 CFR 29.510, and 49 CFR 20.110, respectively. One commenter suggested that these certifications be done on an annual basis. Although the FHWA has used annual certifications in the past, a question arose as to whether an annual certification fully complies with the provisions of previously cited requirements in title 49, CFR. Project-by-project certifications satisfy the requirements in title 49, CFR, and the final rule provides that by signing the project agreement, the State is providing the required certifications.

The language in the NPRM for proposed 23 CFR 630.307(c)(3), (4), and (5) was intended to implement the requirements of 49 CFR 29.630, 49 CFR 29.510, and 49 CFR 20.110, respectively. Differences in language between title 23 and title 49, however, could lead to confusion. Accordingly, it was decided to replace the proposed language for 23 CFR 630.307(c)(3), (4), and (5) with explicit cross-references to the relevant provisions in title 49.

No comments were received on the amendments to parts 635 and 771.

The following table is provided to assist the user in locating the regulatory paragraph changes made 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. |
| None | 630.307 (a) and (b). |
| 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. |
| None | 630.307(c)(3), (c)(4), and (c)(5). |

## Rulemaking Analyses and Notices

As noted above, the FHWA is also making three minor technical changes to 23 CFR part 635, which were not included in the NPRM. Those changes simply involve the removal of the term ''Secondary Road Plan'' from §§ 635.103, 635.124, and 635.126. The FHWA has determined that prior notice and opportunity for comment as to these changes are unnecessary under 5 U.S.C. 553(b)(3)(B) because these changes are required to reflect the nonexistence of the Secondary Road Plan, which was phased out in the ISTEA, and are therefore only minor and technical in nature. The removal of the references to Secondary Road Plan does not substantively effect sections 635.103, 635.104, and 635.126, but merely updates 23 CFR part 635 to reflect current law.

## 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 amendments 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

*23 CFR Parts 630*

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

*23 CFR Parts 635*

Buy America, Government contracts—construction authorization, Grant programs—transportation, Highways and roads, Intergovernmental relations, Interstate maintenance, Materials and product selection.

*23 CFR Parts 771*

Environmental impact statements, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Wildlife refuges.

Issued on: February 4, 1997.

Rodney E. Slater,

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA amends Title 23, Code of Federal Regulations, Parts 630, 635, and 771 as set forth below.

## 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).

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, Agreement provisions regarding overruns in contract time, 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.

## Subpart C—Project Agreements

### § 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) A statement that the State accepts and will comply with the agreement provisions set forth in 23 CFR 630.307;

(6) A statement that the State stipulates that its signature on the project agreement constitutes the making of the certifications 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 part 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.* By signing the project agreement, the SHA agrees to provide a drug-free workplace as required by 49 CFR part 29, subpart F. In signing the project agreement, the State is providing the certification required in appendix C to 49 CFR part 29, unless the State provides an annual certification.

(4) *Suspension and debarment certification*. By signing the project agreement, the SHA agrees to fulfill the responsibility imposed by 49 CFR 29.510 regarding debarment, suspension, and other responsibility matters. In signing the project agreement, the State is providing the certification for its principals required in appendix A to 49 CFR part 29.

(5) *Lobbying certification*. By signing the project agreement, the SHA agrees to abide by the lobbying restrictions set forth in 49 CFR part 20. In signing the project agreement, the State is providing the certification required in appendix A to 49 CFR part 20.

## 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.

### § 635.103 [Amended]

6. Section 635.103 is amended by removing the words ''or secondary road plan''.

7. In § 635.124, paragraph (b) is amended by revising the last sentence to read as follows:

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

* * * * *

(b) * * *. Claims arising on projects handled on Certification Acceptance projects or on exempt non-NHS projects should be processed in accordance with the State's approved Certification Acceptance Plan or Stewardship Plan, as appropriate.

* * * * *

8. In § 635.126, the introductory text of paragraph (b) is revised to read as follows:

### § 635.126 Record of materials, supplies, and labor.

* * * * *

(b) On all Federal-aid construction contracts of $1 million or more for projects on the National Highway System, the SHA shall require the contractor:

* * * * *

## PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

9. 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.

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

### § 771.109 Applicability and responsibilities.

* * * * *

(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.

[FR Doc. 97–3746 Filed 2–13–97; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 8692]**

**RIN 1545–AR76**

## Reissuance of Mortgage Credit Certificates; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to the final and temporary regulations.

**SUMMARY:** This document contains a correction to the final and temporary regulations (TD 8692) which were published in the Federal Register on Tuesday, December 17, 1996 (61 FR 66212). The final and temporary regulations relates to the reissuance of mortgage credit certificates.

**EFFECTIVE DATE:** December 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** Michael Wachtel, (202) 622–3980 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Background

The final and temporary regulations that is subject to this correction is under section 25 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 8692) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 8692) which is the subject of FR Doc. 96–31772 is corrected as follows:

On page 66212, column 3, in the heading, the RIN ''RIN 1545-AR57'' is corrected to read ''RIN 1545-AR76''.

Cynthia E. Grigsby,

*Chief, Regulations Unit Assistant Chief Counsel (Corporate).*

[FR Doc. 97–3653 Filed 2–13–97; 8:45 am]

BILLING CODE 4830–01–U

## 26 CFR Parts 1 and 602

**[TD 8690]**

**RIN 1545–AS95**

## Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions; Correction

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

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to final regulations[TD 8690] which were published in the Federal Register for Monday, December 16, 1996 (61 FR 65946). The final regulations provide guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributing in excess of $75.

**EFFECTIVE DATE:** December 16, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jefferson K. Fox of the Office of Assistant Chief Counsel (Income Tax and Accounting) (202) 622–4930 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Background

The final regulations that are the subject of these corrections are under section 170 of the Internal Revenue Code.

Need for Correction

As published final regulations [TD 8690] contain errors that are misleading and in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations [TD 8690] which are the subject of FR Doc. 96–31719 is corrected as follows:

1. On page 65946, column three, in the heading the RIN ''1545-AS94'' is corrected to read ''1545-AS95''.

2. On page 65946, column three, in the preamble following the paragraph heading ''Paperwork Reduction Act'', third paragraph, line 5, the language ''average of six minutes.'' is corrected to read ''average of six minutes. The estimated annual burden per respondent is two and a half hours.''.

3. On page 65946, column three, in the preamble following the paragraph heading ''Paperwork Reduction Act'', fourth paragraph, line 5, the language ''Reports Clearance Officer, PC:FP,'' is corrected to read ''Reports Clearance Officer, T:FP,''.

Cynthia E. Grigsby,

*Chief, Regulations Unit Assistant Chief Counsel (Corporate).*

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## PENSION BENEFIT GUARANTY CORPORATION

## 29 CFR Part 4044

## Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in March 1997.

**EFFECTIVE DATE:** March 1, 1997.

**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 (202–326–4179 for TTY and TDD).

**SUPPLEMENTARY INFORMATION:** The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during March 1997.

For annuity benefits, the interest assumptions will be 6.20 percent for the first 25 years following the valuation date and 5.00 percent thereafter. For benefits to be paid as lump sums, the