

In pursuit of the DPAS mission, the Department of Commerce endeavors to minimize disruptions to the normal commercial activities of industry. In an effort to streamline the DPAS regulation, BIS is seeking comment on the impact of the DPAS's set-aside for metalworking machines on industry and the effect on industry of the possible elimination of this set-aside.

#### Submission of Comments

All comments must be submitted to the address indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on May 17, 2006. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Department will seek to protect such information to the extent permitted by law. All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482-1900 for assistance.

Dated: April 11, 2006.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 635

[FHWA Docket No. FHWA-FHWA-2006-23552]

RIN 2125-AF18

#### Construction and Maintenance

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

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA proposes to revise certain provisions in 23 CFR part 635 subpart D to address section 5514 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) that requires the FHWA to ensure that the States provide for competition with respect to the specification of alternative types of culvert pipes. This action is in addition to the FHWA's guidance memoranda previously issued on this subject.

**DATES:** Comments must be received on or before June 16, 2006.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, or submit electronically at <http://dmses.dot.gov/submit> or fax comments to (202) 493-2251.

Alternatively, comments may be submitted via the eRulemaking Portal at <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 you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form on all documents 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 <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald Yakowenko, Office of Program Administration, (202) 366-1562 or Mr.

Michael Harkins, Office of the Chief Counsel, (202) 366-4928, Federal Highway Administration, 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:

##### Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by using the Internet to reach the Office of the Federal Register's Home page at: <http://www.archives.gov> or the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

##### Background

On May 11, 2005, the FHWA issued a policy memorandum to clarify the interpretation of our material or product selection policy regarding culvert pipes. Titled "Guidance on Pipe Selection,"<sup>1</sup> this memorandum stated that 23 CFR 635.411(d), Appendix A was not intended to limit or restrict the use of certain pipe materials in specific drainage installations, nor was it intended to prohibit the specifying of alternative materials when the appendix did not require it. The FHWA stated that it would consider further policy changes to clarify this issue following the enactment of reauthorization legislation.

On August 10, 2005, the President signed the SAFETEA-LU (Pub. L. 109-59; Aug. 10, 2005). Section 5514 of the SAFETEA-LU titled "Competition for Specification of Alternative Types of Culvert Pipes," requires the Secretary of Transportation to ensure that States provide for competition with respect to the specification of alternative types of culvert pipes through requirements that are commensurate with competition requirements for other construction materials. This section requires the Secretary to accomplish this action not later than 180 days after the enactment of SAFETEA-LU (or by February 6, 2006).

On October 6, 2005, the FHWA issued a memorandum titled "SAFETEA-LU

<sup>1</sup> See memorandum titled: "Guidance on Pipe Selection," dated May 11, 2005, which is available on the FHWA's home page: <http://www.fhwa.dot.gov/programadmin/contracts/051105.cfm>.

Section 5514''<sup>2</sup> to reaffirm the May 11, 2005, memorandum and comply with the requirements of section 5514. In this memorandum, the FHWA indicated that it would consider this issue and other potential revisions to 23 CFR part 635 during a future rule making.

In each of the above memoranda, we indicated that we would consider appropriate revisions to 23 CFR part 635 in a future rule making. Therefore, we are now proposing to amend 23 CFR 635.411 to implement these changes.

### Proposed Changes

The FHWA proposes to revise its regulation for material and product selection in 23 CFR 635.411.

In § 635.411, we propose to delete paragraph (d) and re-designate paragraphs (e) and (f) as (d) and (e) respectively. We also propose to delete Appendix A to subpart D—“Summary of Acceptable Criteria for Specifying Types of Culvert Pipes” in its entirety. Appendix A to subpart D of part 635 was officially incorporated into FHWA’s regulations on September 30, 1974. Appendix A contained the requirements concerning the specification, number and types of culvert pipes specified on Federal-aid highway construction projects. These requirements were intended to encourage competition and lower the cost of culvert pipes by encouraging the consideration of alternate culvert pipe materials in certain drainage installations.

The FHWA’s policies in 23 CFR subpart D—General Material Requirements support the competitive bidding principles in Title 23 U.S.C. 112 by providing for the broadest consideration of materials to encourage competition. Where alternative products are judged to be of satisfactory quality and equally acceptable on the basis of engineering and economic analysis, the FHWA requires equal consideration in the specification of materials. Therefore, to further implement the provisions of section 5514, and be consistent with the long-standing policy of ensuring the consideration of the largest number of appropriate alternatives that lead to the lowest overall life cycle cost, the FHWA is proposing to delete Appendix A to subpart D of 23 CFR part 635. This will eliminate the specific requirement for the consideration of alternative types of culverts for certain drainage installations. By doing so, the selection and specification of culvert types would be governed by the same regulatory

policy for all other materials in 23 CFR 635.411 thus ensuring competition in the selection of pipes.

### Rulemaking Analyses and Notices

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined preliminarily that this action would not be a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of the U.S. Department of Transportation’s regulatory policies and procedures. We anticipate that the economic impact of this rulemaking would be minimal. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

The proposed changes to the FHWA’s Material or Product Selection policies are considered to be minor in nature. The proposed deletion of Appendix A to subpart D of 23 CFR part 635 eliminates the specific requirement for the consideration of alternative types of culverts for certain drainage installations. Culvert pipes will be subject to the same selection policies as all other highway materials and products.

### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this action on small entities and have determined that the action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses the obligation of Federal funds to States for

Federal-aid highway projects. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and the FHWA certifies that the proposed 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), as it will not result in the expenditure by State, local, tribal governments, or by the private sector, of \$120.7 million or more in any one year (2 U.S.C. 1532 *et seq.*). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

### Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this proposed action would not have a substantial direct effect or sufficient federalism implications on the States. The FHWA has also determined that this proposed action would not preempt any State law or regulation or affect the States’ ability to discharge traditional State governmental functions.

### 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.

<sup>2</sup> See memorandum titled: “SAFETEA—LU Section 5514,” dated October 6, 2005, which is available on the FHWA’s home page: <http://www.fhwa.dot.gov/programadmin/contracts/100605.cfm>.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), the FHWA must obtain approval from the Office of Management and Budget (OMB) for each collection of information we conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain a collection of information requirement for purposes of the PRA.

**National Environmental Policy Act**

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

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

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

**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)**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause an environmental risk to health or safety that might disproportionately affect children.

**Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action 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 laws. The proposed rulemaking addresses obligations of Federal funds to States for Federal-aid highway projects and would

not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

**Executive Order 13211 (Energy Effects)**

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

**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 number 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**

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

Issued on: April 11, 2006.

**J. Richard Capka,**

*Acting Federal Highway Administrator.*

In consideration of the foregoing, the FHWA proposes to amend part 635 of title 23, Code of Federal Regulations, as follows:

**PART 635—CONSTRUCTION AND MAINTENANCE**

1. Revise the authority citation for part 635 to read as follows:

**Authority:** Sec. 5514 of Pub. L. 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), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

**§ 635.411 [Amended]**

2. Amend 23 CFR 635.411 by removing paragraph (d) and redesignating paragraphs (e) and (f) as (d) and (e) respectively.

**Subpart D—[Amended]**

3. Amend 23 CFR Part 635, Subpart D by removing Appendix A to Subpart D.

[FR Doc. E6–5651 Filed 4–14–06; 8:45 am]

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG–124988–05]

RIN 1545–BE72

**Updated Mortality Tables for Determining Current Liability; Hearing Cancellation**

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

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed rulemaking that relates to the affect plans sponsors and administrators, and participants in and beneficiaries of certain retirement plans under section 412(l)(7) of the Internal Revenue Code and section 302(d)(7) of the Employee Retirement Income Security Act of 1974.

**DATES:** The public hearing originally scheduled for Wednesday, April 19, 2006 at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Treena Garrett of the Publications and Regulations Branch, Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, December 2, 2005 (70 FR 72260), announced that a public hearing was scheduled for Wednesday, April 19, 2006, at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 412 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Wednesday, March 29, 2006. Outlines of oral comments were due on Wednesday, March 29, 2006.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit outlines of the topics to be addressed. As of Friday,