



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Installation of RPM's Recycled
by Prison Labor

Date: March 25, 1994

From: Director, Office of Engineering

Reply to
Attn. of: HNG-22

To: Mr. Herbert R. Teets
Regional Federal Highway Administrator (HRA-05)
Homewood, Illinois

This memorandum responds to an Ohio DOT request for an interpretation. The interpretation involves the refurbishment of raised pavement markers (RPM's) by prison labor for subsequent use on Federal-aid projects. The prisoners clean up used RPM's and install new reflectors, as necessary, for the RPM's to meet specifications. The refurbished RPM's would then be made available to contractors as State-furnished materials. The Ohio Division requested our interpretation of two items.

Are these RPM's considered to be "convict produced materials"?

Yes. Prison labor is used to refurbish RPM's from salvaged items of questionable value and/or use into a product that has value and utility. We therefore consider convict refurbished RPM's to be "convict produced materials."

May the RPM's be used on Federal-aid projects, without Federal participation?

Language in 23 U.S.C. 114 requires that materials produced after July 1, 1991, by convict labor can only be used in a Federal-aid highway construction project if such material has been produced in a qualified prison facility, e.g., Ohio Penal Industries. The amount produced during any 12-month period, for use in Federal-aid projects, may not exceed the amount produced for such use during the 12-month period ending July 1, 1987. Therefore, the Ohio DOT must demonstrate and quantify RPM refurbishment by prison labor during the 12-month period ending July 1, 1987. If this refurbishment can be substantiated, to the satisfaction of the Ohio Division Administrator, then an identical amount may be incorporated in Federal-aid highway construction projects during each 12-month period, with or without Federal participation. If refurbishment cannot be substantiated, then no usage of prison labor refurbished RPM's may be made on Federal-aid highway construction projects, with or without Federal participation.



This response has been coordinated with our Office of Chief Counsel.
If you have any further questions on this issue, please contact either
Mr. Allan Rockne or Mr. Edward Sheldahl of my staff.



William A. Weseman

FHWA:HNG-22:ESheldahl:tlf:60355:3/23/94

cc: Official File: 7321.1 Reader Files: HNG-1/HNG-20 Chron File: HNG-22
HNG-2 (Geiger) HNG-22 (Rockne) HNG-22 (Sheldahl) HNG-22
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