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**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Part 635****Contract Procedures; Bonus  
Payments; Rescission of Regulation****AGENCY:** Federal Highway  
Administration (FHWA), DOT.**ACTION:** Rescission of regulation.

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**SUMMARY:** This document rescinds the FHWA regulation on bonus payments because the prohibition against such payments is no longer warranted. This action is in accordance with the current policy to remove where practical, all excessive or extraneous regulations and red tape. Current studies show that bonus payments have in fact been cost-effective under some circumstances. In addition, this rescission would have the effect of reducing the time required to complete some highway projects consistent with the objectives of section 129 of the Surface Transportation Act of 1982. The Federal Highway Administrator finds that there is no

reason to continue the restriction on bonus payments, and that the prohibition should be removed immediately noting that bonus payments are presently only approved as experimental features requiring excessive paperwork.

**EFFECTIVE DATE:** July 13, 1984.

**FOR FURTHER INFORMATION CONTACT:**

Mr. P. E. Cunningham, Chief, Construction and Maintenance Division, (202) 426-0392, or Michael J. Laska, Office of the Chief Counsel, (202) 426-0762, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The regulation on bonus payments contained in 23 CFR Part 635 was first published in a June 28, 1968, FHWA Policy and Procedures Memorandum 21-6.3. The FHWA established that it was its policy not to participate, directly or indirectly, in any part of a bonus to the contractor for completing a project in advance of the time specified. It was FHWA's position at that time that a bonus of such nature was of doubtful value, and so susceptible to abuse that it could rarely be justified. Policy and Procedures Memorandum 21-6.3 was revised and ultimately included in 23 CFR Part 635, Subpart A. The bonus payment prohibition contained in § 635.118 is thus administrative and not mandated by statute.

The FHWA initiated the National Experimental and Evaluation Program Project No. 24, on July 15, 1977. The objective was to evaluate the use of incentive and disincentive (I/D) provisions in expediting the completion of Federal-aid highway construction projects. The evaluation showed that these provisions were not abused, but rather that they were a valuable construction tool and were cost-justified. The I/D provisions were found to be most effective for 4R, bridge reconstruction, or other projects where traffic inconvenience and delays become significant. Under any circumstances, we expect that incentive payments will continue to be used primarily on 4R and bridge reconstruction projects where past experience has shown in some cases they are cost-effective in reducing traffic inconvenience and delays. On other types of projects, they should be used only when an analysis indicates that their use would be in the public interest, and that the benefits in cost savings and/or increased safety would outweigh the cost of the incentive payments.

The I/D concept is a predetermined method of scheduling payments that compensate the contractor a certain amount of money for each day the work is completed ahead of schedule and makes a deduction for each day the contractor overruns the completion date. The I/D provisions have been proven to be effective in reducing the contract completion time. The increase in costs due to use of I/D provisions (double shifts, overtime pay, etc.) has been more than offset by: (1) Reducing inflationary costs, (2) minimizing inconvenience to the traveling public caused by delays, (3) increasing safety through the construction zone, (4) reducing expenses associated with maintaining traffic control during construction, and (5) reducing the costs of project administration and inspection. The FHWA is therefore rescinding its regulation on bonus payments noting that the policy prohibiting those payments to contractors for completion of the contract in advance of the time specified is no longer warranted. At this time, the FHWA is providing general guidance to its field offices advising them on the appropriate use of bonus payments now that the policy prohibiting them has been rescinded. After a period of experience, more detailed direction will be provided as appropriate.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information. As discussed previously, the economic impact of this rulemaking action will be minimal, since such economic impact as will occur was determined to be cost beneficial as documented through the National Experimental and Evaluation Program and/or other actual contract experience. Accordingly, a full regulatory evaluation is not required. For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 23 CFR Part 635**

Government contracts, Grant programs—transportation, Highways and roads.

**PART 635—CONSTRUCTION AND MAINTENANCE**

**Subpart A—Contract Procedures**

**§ 635.118 [Removed]**

In consideration of the foregoing, the FHWA hereby amends Part 635, Subpart A of Title 23, Code of Federal Regulations, by removing § 635.118 "Bonus Payments."

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program)

(23 U.S.C. 315; 49 CFR 1.48(b))

Issued on: June 6, 1984.

**L. P. Lamm,**

*Deputy Federal Highway Administrator,  
Federal Highway Administration.*

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