



U.S. Department  
of Transportation

**Federal Highway  
Administration**

# Memorandum

Washington, D.C. 20590

Subject: Participation in Contract Claim  
Awards and Settlements

Date: **OCT 23 1985**

From: Associate Administrator for Engineering  
and Program Development

Reply to :  
Attn. of: HHO-32

To: Regional Federal Highway Administrators  
Regions 1-10

Attached is a copy of the final rule that was published in the Federal Register on October 16, 1985. The revision clarifies the current regulation by specifying more definitive criteria for determining eligibility for participation. Some of the key points of the rule are as follows:

1. The FHWA maintains its rights to exercise separate and independent judgment on claim reimbursement eligibility questions. The present case-by-case determination approach is retained.
2. The regulation requires that the FHWA be made aware of the details of the claim at an early stage. This also includes notifying the FHWA about certification acceptance project claims where the case is unusual or controversial.
3. The SHA shall indicate in writing the legal and contractual basis for the claim and is to submit cost data and other facts that would support the award or settlement.
4. The FHWA will participate in court or arbitration awards even if in an amount that is more than can be justified by the SHA, providing certain conditions are met, such as prior consultation with the FHWA.
5. Payment of interest is authorized as an eligible Federal participating cost if the State has a statute that allows it and certain other conditions concerning diligence of processing the case are met.
6. Several cost items ineligible for Federal participation are identified, such as anticipated profits and opposing party attorneys' fees.

7. Where SHA's recover compensatory damages, through the claims process, on projects having Federal participation, a credit is required for the Federal share of such recovery.

A companion revision to FHPM 6-4-1-6 has been prepared and will be issued shortly.

*Rex C. Leathers*  
for Rex C. Leathers

Attachment

Archived