



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

Memorandum

Subject: **Alternative Disputes Resolution**

Date: **DEC 16 1992**

From: **Chief, Construction and Maintenance Division
Office of Engineering**

Reply to
Attn of: **HNG-22**

To: **Regional Federal Highway Administrators
Federal Lands Highway Program Administrator**

This office recently received a request to clarify the FHWA's policy on the use of alternative disputes resolution (ADR) methods to resolve claims on exempted National Highway System (NHS) and exempted non-NHS projects. This subject was also discussed at the recent AASHTO construction subcommittee meeting.

The FHWA's policy on the resolution of contract claims is included in 23 CFR 635.124, namely that FHWA participation in awards and settlements will be decided on a case-by-case basis. The FHWA encourages the use of ADR methods to resolve claims but such use will not guarantee FHWA participation in awards or settlements. This was discussed in my April 19, 1989, memorandum.

For exempted NHS projects, FHWA contract administration procedures apply and the State must comply with these as if the FHWA were involved in the project. The FHWA participation in the settlement of contract claims, including the use of ADR, on exempted NHS projects will be determined by the State on a case-by-case basis as prescribed in 23 CFR 635.124. The FHWA will monitor the State through routine process reviews.

For exempted non-NHS projects, FHWA participation in the settlement of contract claims, including the use of ADR will be determined by the State applying its own procedures without regard to compliance with 23 CFR 635.124. However, States must comply with allowable cost principles of OMB Circular A-87 as addressed in 49 CFR 18.22. The FHWA may undertake reviews on exempted non-NHS projects as needed, based on specific problems brought to its attention.

If you have any further questions on this matter, please contact Mr. Edward A. Sheldahl of my staff at either (202) 366-1565 or ESHELDAHL on E-mail.


William A. Weseman