



U.S. Department of Transportation  
Federal Highway Administration



# 2022 Updates to Form FHWA-1273

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Federal Highway Administration

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# Today's briefing

- Overview of FHWA-1273
- FHWA-1273 topic areas
- Revision timeline
- Effective date
- Section-by-section discussion of changes
- Helpful links for more information





# Overview of FHWA-1273

- Collection of required contract provisions and required proposal notices
- Required by regulations promulgated by the FHWA or other Federal agencies
- Must be physically incorporated into construction contracts funded under title 23 (including design-build contracts), subcontracts and lower tier subcontracts
- Attachment A applies to Appalachian construction contracts
- Periodically updated since 1974; previous version dated May 1, 2012
- Source: [23 CFR 633.102](#) and [FHWA Contract Administration Core Curriculum Manual](#)

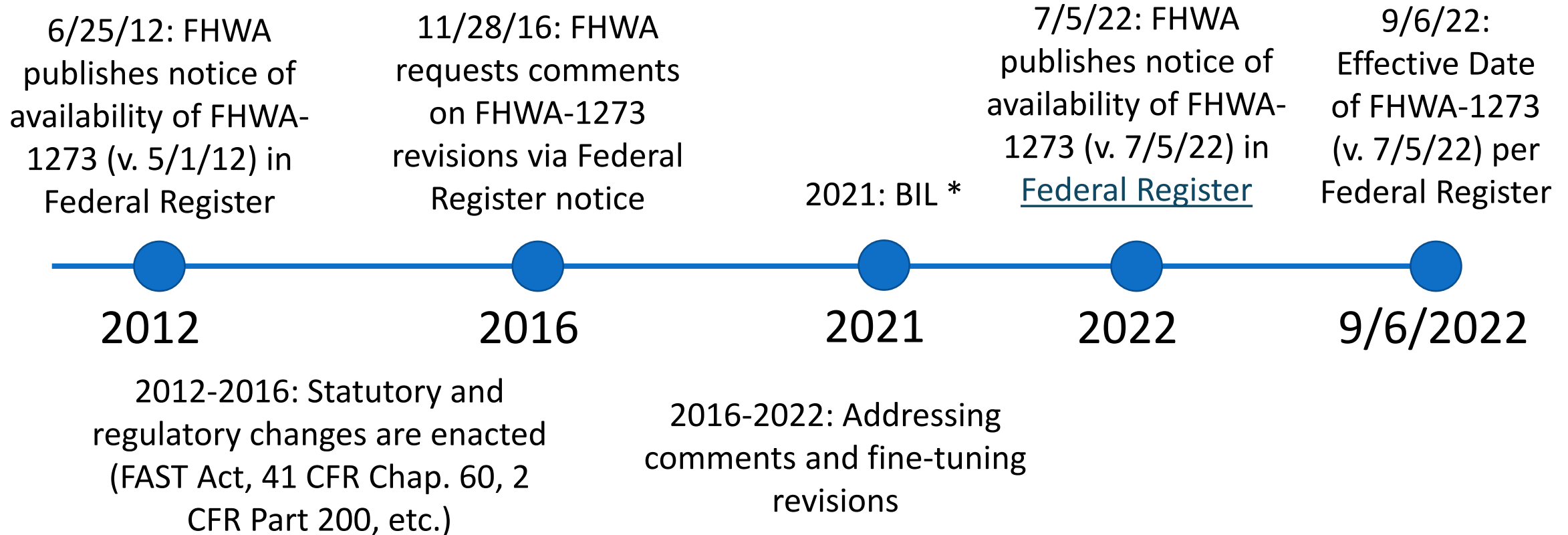


# FHWA-1273 Topic Areas

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
- X. Implementation of Clean Air Act and Federal Water Pollution Control Act
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels (***New in FHWA-1273***)



# FHWA-1273 Revision Timeline



\* *Additional statutory changes (Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 11/15/2021))*



# FHWA-1273 Effective Date

- Effective date for new FHWA-1273 per [Federal Register notice](#) is September 6, 2022
- Contracting agencies may begin using the new FHWA-1273 (dated 7/5/2022) immediately at their option where bids or responses to solicitations are due prior to the effective date
- Contracting agencies must include the new FHWA-1273 in all Federal-aid construction contracts where bids or responses to solicitations are due on or after the effective date
- The requirement to use the new FHWA-1273 does not apply to pre-existing contracts



# Overview of Changes

- Changes have been made throughout the document to address relevant changes in statute and regulation
- Requirements have been tied to their statutory and regulatory source throughout the FHWA-1273, with more specific citations
- Minor typographical and grammar corrections have been made
- FHWA has provided a [Section-by-Section summary](#) of the substantive changes on its website





# Minor Changes

- Sections with minor or no changes\*:
  - I. General
  - VI. Subletting or Assigning the Contract
  - VII. Safety: Accident Prevention
  - VIII. False Statements Concerning Highway Projects
  - XI. Certification Regarding Use of Contract Funds For Lobbying
  - Attachment A. – Employment Preference for Appalachian Contracts

\* Additional statutory and regulatory citations have been added to all sections



# Changes – II. Nondiscrimination and III. Non-segregated Facilities

- Several paragraphs have been revised by replacing “sex” with “sex, sexual orientation, and gender identity” as required by the revisions of 41 CFR 60–1 (See the US Department of Labor, Office of Federal Contract Compliance (OFCCP) 12/9/2014 final rule, 79 FR 72985)
- II. Nondiscrimination, Section 10
  - Retitled as “Assurances Required”
  - Assurances required by 49 CFR 26.13(b) are included verbatim
  - Reference is provided for the Title VI assurance required by U.S. DOT Order 1050.2A Appendices A and E, Title VI of the Civil Rights Act of 1964, and U.S. DOT Title VI regulations at 49 CFR Part 21



# Changes – IV. Davis-Bacon and Related Act Provisions

- Previous FHWA policy was based on the application of prevailing wage requirements to construction work on Federal-aid highways (23 U.S.C. 113); however, revised title 23 U.S.C. now has several sections that require projects funded under certain programs to be ***treated as a project on a Federal-aid highway regardless of location***
- *“Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project” (FHWA-1273, Section IV.)*



# Changes – IV. Davis-Bacon and Related Act Provisions (cont.)

- The 2015 FAST Act included a “treatment of project” provision for Surface Transportation Block Grant funded projects (excluding recreational trail projects), Nationally Significant Freight and Highway Projects, and National Highway Freight Program projects
  - These examples are listed in FHWA-1273
- The 2021 BIL includes similar provisions in numerous new funding programs
  - The BIL provisions are not listed in FHWA-1273, but still apply as provided by law



# Changes – V. Contract Work Hours and Safety Standards Act

- The US Department of Labor (USDOL) issued several rulemakings regarding the Contract Provisions and Related Matters in 29 CFR 5.5
- Between 2016 and 2019, USDOL increased its daily liquidated damage rate from \$10 to \$27
- In January 2022, USDOL issued a final rule (87 FR 2328) which updated the rate to \$29 per day
- FHWA-1273 Section V.2 is modified to reflect that the rate is ***“the sum currently provided in 29 CFR 5.5(b)(2)...”***



# Changes – IX. Implementation of Clean Air Act and Federal Water Pollution Control Act

- Provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. [2 CFR 200 Appendix II (G)]
- All non-Federal entities with contracts and subgrants in excess of \$150,000 must include provisions to comply with all related standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) as required by 2 CFR 200.327\*
- A flow-down provision has been added to address contractor and lower tier responsibilities to apply and enforce these requirements

\* The regulatory text previously found at 2 CFR 200.326 has since been renumbered to 2 CFR 200.327 (11/12/2020, 85 FR 49506)



# Changes – Section X. Certification Regarding Debarment, Suspension...

- All references to the Excluded Parties List System have been changed to the System for Award Management ([www.sam.gov](http://www.sam.gov)), as required by 2 CFR Part 180
- Additional first tier and lower tier certifications are included to ensure that awards are not made to companies who have a verified Federal tax delinquency or companies who have been convicted of a Federal felony offense within 2 years prior to the award
  - The new certifications implement the Governmentwide General Provisions, under Division E, Title VII, Financial Services and General Government Appropriations Act, FY 2016 (Sections 745-746 in the FY 2016 Act, 129 STAT. 2485-86) and subsequent annual appropriations acts



# Changes – XII. Use of United States-Flag Vessels

- New section in FHWA-1273 to implement requirements of Cargo Preference Act (as amended in 2008) on Federal-aid projects
- Requirements apply to the oceanic shipment (or shipments across Great Lakes) of materials or equipment that is intended for use on a specific Federal-aid project
  - Examples: Precast concrete structural members, fabricated structural steel, tunnel boring machines, or large-capacity cranes
- Requires use of US-flag vessels under specified conditions
- Does not apply to goods or materials that come into inventories independent of a FHWA-funded contract
- For additional information on Cargo Preference, see:
  - [FHWA's 12/8/2015 legal opinion](#)
  - [Cargo Preference Requirements - Questions and Answers](#)





# Contracting Agency Special Provisions

- As statutory and regulatory requirements have changed in recent years, contracting agencies have developed special provisions to address those changes
- As agencies implement the new FHWA-1273, consider reviewing those special provisions to avoid duplication or conflict with the new FHWA-1273



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# Helpful Links

- [FHWA's Form FHWA-1273 Web Page](#)
- [FHWA-1273 dated July 5, 2022](#)
- [Section-by-Section Changes of FHWA-1273](#)
- [Federal Register notice announcing the updated FHWA-1273](#)
- [FHWA's Construction Program Guide](#)



# Thank you! Questions?

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