

Section-by-Section Summary of Changes to Form FHWA 1273

August 3, 2022¹

The following is a section-by-section overview of the revisions made to Form FHWA-1273. Grammatical and minor formatting revisions have been made where appropriate (and to be consistent with 2 CFR 200) throughout the document.

I. GENERAL

II. NONDISCRIMINATION

- Several paragraphs of this section 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 U.S. Department of Labor, Office of Federal Contract Compliance Programs 12/9/2014, final rule, 79 FR 72985.)
- Section 10. This section title is retitled as “Assurances Required” and the assurance required by 49 CFR 26.13(b) is included verbatim and a reference is provided for the Title VI assurance required by DOT Order 1050.2A Appendices A and E, Title VI of the Civil Rights Act of 1964, and DOT Title VI regulations at 49 CFR Part 21.

III. NONSEGREGATED FACILITIES

- The second paragraph of this section is revised by replacing “sex” with “sex, sexual orientation, and gender identity” as noted above.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

- Previous Federal Highway Administration (FHWA) policy was based on the application of prevailing wage requirements to 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. The following sentence was added to the first initial paragraph to address the “the “treatment of projects” provision in revised 23 U.S.C. The inserted sentence reads as follows: “*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. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.*”

¹ This revision corrects a typographical error. The previous version of this document dated July 5, 2022, incorrectly placed discussion on Section 10 under “III. Nonsegregated Facilities,” rather than under “II. Nondiscrimination.”

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- Subsequent to the November 28, 2016, Federal Register Notice and Request for Comments announcing FHWA’s intent to revise form FHWA-1273, the U.S. Department of Labor (DOL) issued several rulemakings regarding the Contract Provisions and Related Matters in 29 CFR 5.5. The FHWA is incorporating these provisions in Form FHWA-1273 with minor editorial changes to match the formatting and context of form FHWA-1273.
 - On July 1, 2016, DOL issued an Interim final rule (81 FR 43450) providing for an adjustment of the liquidated damage rate in 29 CFR 5.5(b)(2) from \$10 to \$25. The revision was mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) which requires agencies to adjust the levels of civil monetary penalties with an initial catchup adjustment, followed by annual adjustments for inflation.
 - On January 9, 2017, DOL issued a final rule (82 FR 2225) revising 29 CFR 5.5 to delete the reference to the term “Employment Standards Administration” and to make other minor revisions.
 - On January 23, 2019, DOL issued a final rule (84 FR 218) revising 29 CFR 5.5 to provide for another adjustment of the liquidated damage rate in 29 CFR 5.5(b)(2) from \$25 to \$27.
- Form FHWA-1273, Section V.2 is modified to provide for the current \$27 liquidated damage rate with a note referencing 29 CFR 5.5(b)(2) for future DOL updates to the liquidated damage rate.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

- No change.

VII. SAFETY: ACCIDENT PREVENTION

- No change.

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

- No change.

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:

- The provisions in this section were revised to be consistent with the requirements in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards in 2 CFR 200. 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 200.326.

- The following sentence was added to Section IX to address flow-down provisions: “The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.”

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:

- All references to the Excluded Parties List System have been changed to the System for Award Management (www.sam.gov), as required by 2 CFR Part 180.
- New 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 each subsequent annual appropriations act as of FY 2020.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING:

- No change.

XII. USE OF UNITED STATES-FLAG VESSELS

- A new section was added to implement Cargo Preference Act requirements on Federal-aid projects. On October 14, 2008, the President signed the Duncan Hunter National Defense Authorization Act of 2009. Section 3511 of that act amended the Cargo Preference Act by stating the requirements apply to cargoes financed “in any way with Federal funds for the account of any persons unless otherwise exempted.” See [FHWA’s December 8, 2015, legal opinion titled: “Cargo Preference Act and Federal-aid Projects”](#) for additional information. This provision requires the use of U.S.-flag vessels whenever an oceanic shipment (or a shipment across the Great Lakes) is necessary for materials or equipment acquired for a specific Federal-aid construction project.

ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS:

- No change.