



## Questions and Answers for New Project End Date Process

### Questions and Answers from ODOT:

Q: Are the new regulations set in stone?

**A: The end date regulations are established yes, but ODOT will have the opportunity to work with FHWA through this process to help establish more understanding of the regulations.**

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Q: Do I need to worry about my older project phases obligated before December 26, 2014 needing an end date?

**A: Depends. If your project requires a modification to the funding, then you will need to add an end date. If you do not have to modify the funding, then you do not need to worry about adding an end date.**

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Q: Who establishes the end date?

**A: The requestor will establish the end date. End dates can be conservative but are not to egregious. For example, a design phase expected to last 1 year should not have an end date of 4 years later.**

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Q: Will there be a report provided for upcoming end dates?

**A: Yes. Program and Funding Services is currently working on developing a 30, 60, 90 day report to share with ODOT for the end dates.**

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Q: Is this for all federal aid projects or just ODOT projects?

**A: This is for all projects, including ODOT and local projects.**

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Q: Is this for all phases of a project?

**A: Yes, this is for all phases of any project. This also includes planning funding. Any funds we obligate with FHWA will need an end date provided.**

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Q: If we pass the end date without requesting a new end date, will we still be able to modify the end date after the fact?

**A: All expenditures after the end date will be non-participating costs to the project. Extending the end date afterwards will need to be approved by FHWA with justification. And again, any charges between the end date to the new approved end date will be non-participating.**

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Q: Where can we find the end dates established for the EA's?

**A: The end dates will be in TEAMS**

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Q: Will the PE end date automatically be updated at PS&E to 3 months like current business practice is now or stay at whatever the requestor provided at authorization?

**A: The end date will stay as originally provided at authorization. Program and Funding Services may inquire with the requestor about moving the end date up when projects move into construction.**

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Q: Plant establishment periods typically run 1 year beyond the end of construction. Will the 90 days start after the plant establishment period ends?

**A: The 90 days will start after the Region/Program establishes an end date.**

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Q: What do we do about groups (consultants, contractors, university, material suppliers, other) that invoice us beyond the 90 day window for project work?

**A: ODOT will need to work with the various entities to invoice on a timely manner to ensure the funds are paid with federal funds. If the invoices are not paid before the 90 days, then the costs will be non-participating. Local Program is currently looking at how to incorporate language into IGA's to help address this invoice issue.**

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Q: Do we envision any problems with the monumentation of projects that take place in that 180 day window from second note?

**A: No. ODOT will just need to account for the additional time needed for monumentation when establishing the end date.**

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Q: What happens if there is lengthy litigation associated with right of way issues?

**A: ODOT will be able to extend the end date with the justification of litigation is causing the change.**

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Q: What about significant change orders, construction delays, cancelling contracts (like Salt Creek Half Viaducts)?

**A: ODOT will be able to extend the end date with the justification of what is causing the change.**

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Q: What are the consequences if ODOT fails to meet the dates?

**A: All expenses incurred after the end date will be non-participating.**

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Q: Will changing end dates require STIP amendments?

**A: No. They will not require STIP amendments.**

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Q: Can the project end date link up to the contract/supporting documentation (i.e. change orders) or can additional days be added past the contract period to account for such things as State DOT staff time for preparation of final plans, DBE certification/validation, etc.?

**A: The period of performance must be based on the States estimated project schedule, including required processes to ensure all Federal requirements were satisfied. Also, Divisions must ensure the estimated period of performance is in line with the States established policies, procedures, and project schedules." All necessary project actions should be considered as you derive your project end date.**

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Q: If additional time can be added after the contract period to establish the project end date, please describe the process the Division and State DOT would need to go through to define, approve and consistently apply the additional days.

**A: Any additional time beyond the construction schedule required to complete all federal-aid requirements should be based on a process assessment by the State DOT. The additional time should also be consistent with the States processes and procedures to complete the required activities. And it should be reasonable to reflect the intent of the requirements in 2 CFR 200.**

The Implementation Guidance Memo reference for this question is found in the Q&A section, #14 which states: "A project end date can be updated or changed after the execution of the project agreement. The extension of a project end date would have to reflect a delay in the project which is beyond the control of the recipient/sub recipient or based on changes to the project agreement which would have an impact on the project end date (e.g. change in project scope). Any extension or modification to the project end date would have to be authorized by the awarding agency." For FHWA projects these would need to be requested by the State DOT via FMIS and then approved in FMIS by the local FHWA Division Office. There also needs to be a justification for the extension or change documented in the State remarks.

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Q: : Does the Project End Date requirement for FHWA Agreements apply only to Agreements authorizing construction phases or does the requirement also apply to Agreements that are only authorizing PE or ROW phases?

**A: The Project End Date is required on all Federal awards.**

**For those States that include all phases of work on one project, then the initial Project End Date should reflect the Project End Date for the phase of work being authorized, i.e. PE or ROW. When the project agreement is modified to add a future phase of work such as construction then the Project End Date must also be modified. Let me note here that as FHWA continues to implement the Uniform Guidance requirements, we'll notify our recipients of any changes.**

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Q: Is FMIS 5.0 going to have a control in place to reject billings that include costs on projects which have passed the 90 days after the period of performance?

**A: Once a project end date field is added to FMIS 5, there will most likely be an edit that will prevent any billing of Federal costs on the project 90 days after the project end date.**

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Q: Will States be allowed to include their audit process within their period of performance?

**A: Any costs incurred after the project end date are not eligible for reimbursement. That means that all project auditing and closeout timeframes should be included in the planning of the period of performance - if the costs of performing those activities are going to be claimed against the Federal award.**

**FHWA has one year after the 90 day period ends to complete project closeout.**

**And keep in mind that even after project closeout, the awarding agency has the right to disallow costs and recover funds on the basis of a later audit or other review, see 200.344.**

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Q: What fields in FMIS 5 should include the Project Start and Project End Dates?

**A: The project Start Date in FMIS 4 and 5 is identified as the authorization date. As we discussed, a data field to record the project end date is not currently available in FMIS 4.**

**And the initial release of FMIS 5 won't include the project end date. Until the project end date is programmed into FMIS 5 and becomes mandatory, States should enter this information in the State Remarks field when a new project agreement is executed or an existing agreement is modified.**

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Q: When is a performance end date required after 12/26/14?

- If a State DOT processes a project agreement with only a cost change for an existing project in FMIS after 12/26/14, are they required to supply a performance end date?
- If a State DOT closes an existing project in FMIS after 12/26/14, do they have to supply a performance end date?
- Is a performance end date required on project agreements after 12/26/14 for new phases of work such as PE, Wetland Mitigation, ROW, Utilities, Construction, Change in Scope?

**A: Per the FHWA guidance, "Until FMIS 5 includes the project end date field, States should enter this information in the State Remarks field when a new project agreement is executed or an existing agreement is modified. The period of performance must be based on the States' estimated project schedule, including required processes to ensure all Federal requirements have been satisfied. Divisions must ensure the estimated period of performance is in line with the States' established policies, procedures, and project schedules. The agreement end date may be modified as necessary, based on documented revisions to project schedules or other circumstances."**

**As such, there is no absolute requirement to enter the project end date in FMIS until FMIS 5 includes the project end date field. However, entering an estimated project end date is considered a best practice and will facilitate modifying projects in FMIS 5 if these dates have already been determined.**

**If a project was administered under the previous administrative requirements (i.e. 49 CFR Part 18), there is no requirement to include a project end date. States should consider entering or modifying the project end date whenever there is a significant change in scope to the project.**

**When the project end date field is available in FMIS 5, this field must be updated whenever a new agreement or modification to an existing agreement is executed.**

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Q: Is a project agreement or modification the vehicle to change a project end date? When a state wants to modify an existing performance end date to extend it further, what is to be provided to the Division offices on the project authorization?

**A: The answer to the first part is Yes; changes to project end dates are requested by the State DOT using FMIS. All agreements and modifications are approved by the FHWA Division Office.**

**For the second part, a justification to extend the project end date is needed and should provide sufficient information in order for the Division office to consider your request.**

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Q: What happens when the performance end date the State DOT provided passes and a project agreement modification hasn't been processed?

**A: Costs incurred after the project end date are not eligible for reimbursement. Costs that were incurred prior to the project end date need to be submitted and paid for reimbursement within 90 days after the project end date.**

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What happens when a State DOT wishes to extend the project end date once the authorized project end date has passed?

**A: A modification to the project end date must be requested and approved before costs are incurred beyond the authorized project end date, otherwise they are not eligible.**

**Now, 23 CFR 1.9(b) provides authority for a Division office to authorize incurred cost prior to authorization. FHWA is reviewing and considering revisions to 23 CFR 1.9(b) to authorize costs after the period of performance has expired also.**

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Q: As to agreement end date, we struggle with the landscaping issue. If a project includes a tree, we can't close the project at the state level for a year to ensure that the tree is going to live. Should projects that have landscaping issues include a 12 month buffer (in end date calculation) for this purpose?

**A: We are going to reference Implementation Guidance Memo Q&A #13 again. "The period of performance must be based on the States estimated project schedule, including required processes to ensure all Federal requirements have been satisfied.**

**Division must ensure the estimated period of performance is in line with the States established policies, procedures, and project schedules." So, all necessary project actions should be taken into consideration in establishing the period of performance.**

**How does a replacement of a tree impact the Federal-aid project? If it does not have an impact on the federal-aid project then a 12 month buffer would not need to be made, as the project end date does not need to reflect the project warranty period.**

**You'll want to refer to the policy memorandum on "Project Funds Management Guide for State Grants" that's dated October 29, 2014, specifically the section on Warranty Provisions Associated with Project Closeout which states the following: "There are many types of warranty provisions that may need to be taken into consideration prior to closing out a project. In most instances, the project should be prepared for closure upon the State DOT's final acceptance and when the contractor is provided final payment. There may be instances where final payment may include a delayed payment for retention for items such as plant establishment requirements. Keeping a project open solely due to the existence of a warranty is not appropriate. Long term warranties where periodic evaluation is needed are not justification for the project to remain open. Eligible periodic evaluations should be accounted for separately, such as through an indirect cost rate or by setting up a separate project, depending upon the recipient's cost accounting policies."**

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**Q: Is it the expectation to go back and input within FMIS 5 (when released) the project end date data for those projects that met the requirement for the period between December 26, 2014 and the release of FMIS 5 since FMIS 4 project end date data provided that will be placed within the State's remarks field will probably not be migrated into FMIS 5?**

**A: The project end date field will not be included in the initial release of FMIS 5 but this programming effort is on the list of upgrade initiatives for FMIS 5. As soon as the project end date field is available in FMIS5, it will be a required field for all new authorizations and for those existing agreements which are modified.**

**It will be up to the division/state to determine if a proactive approach should take place to update this field on all existing projects or to simply wait for a modification to be executed.**

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**Q: If there isn't a project end date established by phase of work how should the Division monitor when the PE or ROW phase can no longer be billed?**

**Shouldn't there be an expectation that prior phases of work be billed within 90 days of the following phase being initiated/authorized? With the 10 and 20 year PE and ROW payback provisions, it could be up to 20 years before a project would go to construction.**

**A: This is a very good question, and one that is still being evaluated by FHWA. As we have already stated, the Uniform Guidance requires a project end date for each Federal Award. As soon as FMIS 5 includes the project end date field, the project agreement must include a project end date based on the scope of work to be completed under the agreement. If the project agreement is for PE, the period of performance will be based on the schedule to complete the PE work. If the project agreement is later modified to include construction, the project end date must be modified to reflect the new scope of work. States should insure all project costs eligible under each phase of work are incurred and claimed according to the requirements of the period of performance for that phase of work. The 10 year and 20 year PE and ROW payback are based on the date of authorization and not the project end date. If PE was authorized on January 12, 2001, then they have 10 years from that date to advance that project to ROW or Construction. If ROW was authorized on February 12, 2005, then they have 20 years from that date to advance that project to Construction.**

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**Q: For a multi-phased project (PE to ROW to Construction and/or multiple construction phases under one FMIS project number) would the supporting documentation for the project end date initially need to be a programming data form that supported the establishment of the project end date in FMIS? One would have to assume if this is the case, the date may be modified as more information becomes available and the project moves forward to and through construction.**

**A: State and Division Offices need to discuss general methodology for determining project end dates. A justification may be requested by a Division upon initial submittal of a project end date if it does not conform to the approved methodology or they do not concur with the estimated project end date. Once a project end date is established and authorized, justification must be provided in the State Remarks field in FMIS to change or extend the date.**

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Q: With local agency projects, there may not be sufficient funding to construct the project but they want to begin the design phase with the funding available. If no plan for construction exists early in the development stage, how would a construction end date be established?

**A: The Project end date for the design phase would be established at authorization. And if a construction phase is added, the project end date should be modified-extended to include the new scope of work for construction.**

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