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This document is scheduled to be published in the Federal Register on 05/30/2025 and available online at <https://federalregister.gov/d/2025-09715>, and on <https://govinfo.gov> 910-22-P]

Federal Highway Administration

23 CFR Part 630

[Docket No. FHWA-2025-0011]

RIN 2125-AG18

Rescinding Requirements Regarding Bridges on Federal Dams

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FHWA is proposing to rescind the rule and regulations issued on October 10, 1974, Bridges on Federal Dams.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at www.regulations.gov. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on

April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or you may visit

www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Samantha Pratt, Office of Infrastructure, (737) 389-1048, samantha.pratt@dot.gov, Federal Highway Administration, 300 East 8th Street, Room 826, Austin, TX 78701; or Mr. David Serody, Office of the Chief Counsel, (202) 366-4241, david.serody@dot.gov, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at www.regulations.gov. The Web site is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: www.federalregister.gov.

Background

FHWA is proposing to rescind the rule issued on October 10, 1974, Bridges on Federal Dams, via 39 FR 36473, amending 23 CFR part 630, subpart H. The rule proposed for rescission prescribes procedures for the construction and financing, by an agency of the Federal Government, of public highway bridges over dams constructed and owned by or for the United States. 23 CFR 630.801. The FHWA proposes to rescind 23 CFR part 630, subpart H in full and seek comment on all aspects of that proposal.

Under 23 U.S.C. 320(a), State Departments of Transportation (DOT), jointly with the Secretary of Transportation, may determine and certify to a Federal agency which has jurisdiction over and custody of a dam constructed or to be constructed and owned by or for the United States that a public highway bridge upon and across such dam is

economically desirable and needed as a link in the State or Federal-aid highway systems. The Federal agency may then use funds available to it to design and construct the dam in such manner that will serve as a suitable and adequate foundation for a public highway bridge and to design and construct a public highway bridge upon and across the dam. 23 U.S.C. 320(a). In addition, construction of any bridge upon and across any dam pursuant to 23 U.S.C. 320 may not start until the State in which the bridge is to be located, or the appropriate subdivision of such State, enters into an agreement with the Federal agency and the Secretary of Transportation to construct the approach roads necessary to connect such bridge with existing public highways. 23 U.S.C. 320(b). While a portion of the bridge may be financed wholly with Federal funds, any approach roads “shall be financed by the State or its appropriate subdivision with or without the aid of Federal funds.” 23 U.S.C. 320(d). Finally, 23 U.S.C. 320(f) makes clear that 23 U.S.C. 320 does not affect any bridge, approach structure, or highway constructed or to be constructed by a Federal agency to satisfy a legal obligation incurred independently of 23 U.S.C. 320.

On October 10, 1974, FHWA amended 23 CFR part 630 by adding a new subpart H. 39 FR 36473. This rule required that a proposed bridge over a dam constructed and owned by or for the United States, together with the approach roads to connect the bridge with existing public highways, must be eligible for inclusion in the Federal-aid highway system. 23 CFR 630.802. The regulation also required that a State’s application to qualify a project under the new subpart to include a certification that the bridge is economically desirable and needed as a link in the Federal-aid highway system, a statement showing the source and availability of funds to be used in construction of the roadway approaches, and a statement of any obligation on the part of the agency constructing the dam to provide such bridge or approach roads to satisfy a legal liability incurred independently of the subpart. 23 CFR 630.803. This subpart has not been amended since its issuance in 1974.

The Secretary of Transportation is pursuing a new policy to reduce regulatory burdens wherever possible. Under that policy, unless a regulatory standard is required by statute, the Secretary proposes eliminating that requirement. As such, to the extent that 23 CFR part 630, subpart H is not required by 23 U.S.C. 320 or other applicable statute, FHWA is proposing to rescind the regulation. As FHWA does not believe that 23 U.S.C. 320 contains ambiguity that necessitates regulations, to the extent that 23 CFR part 630, subpart H has provisions not required by statute, FHWA believes those provisions merely duplicate statutory language and are unnecessary. For instance, 23 CFR 630.803(a) merely reiterates language in 23 U.S.C. 320(a) and 23 CFR 630.803(c) reiterates language in 23 U.S.C. 320(f).

Further, as a practical matter, no additional funding for the construction of bridges on Federal dams has been authorized since the Federal-Aid Highway Act of 1978 (Pub. L. 95-599). In Fiscal Year 1994, Congress rescinded the balance of funds that were made available for bridges on Federal dams pursuant to 23 U.S.C. 320, leaving no funds currently available for the work contemplated by 23 CFR part 630, subpart H. *See* Pub. L. 103-211, Title III, Chapter 10. Were Congress to provide additional funds, FHWA believes the requirements in 23 U.S.C. 320 are sufficiently clear. As such, FHWA is proposing to rescind the regulations in 23 CFR part 630, subpart H regarding procedures for the construction and financing of public highway bridges over dams constructed and owned by or for the United States. The FHWA seeks comment on any reasons to rescind or not to rescind these regulations.

Rulemaking Analyses and Notices

A. Executive Orders 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This proposed rule does not meet the criteria of a “significant regulatory action”

under Executive Order 12866, as amended by Executive Orders 14215 and 13563.

Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

This rule would remove requirements for projects that are not currently funded. While FHWA believes there are deregulatory benefits to this rule, FHWA believes any monetary benefits or costs to this rule would be minimal. The FHWA seeks comments on any impacts that could result from removing the provisions identified in this NPRM.

These changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

This proposed rule is not an E.O. 14192 regulatory action. This rule would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impacts of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996; 5 U.S.C. 601 et seq.), agencies must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). No regulatory flexibility analysis is required, however, if the head of an agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities.

FHWA has concluded and hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities; therefore, an analysis is not included. This proposed rescission would only remove requirements regarding procedures for the construction and financing of public highway bridges over dams constructed and owned by or for the United States that are not otherwise required by statute.

D. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4, 109 Stat. 48) for State, local and Tribal governments, or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in E.O. 13132. The FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

F. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule is deregulatory and so would not impose any additional information collection requirements.

G. National Environmental Policy Act

FHWA has analyzed this rule pursuant to the NEPA and has determined that it is categorically excluded under 23 CFR 771.117(c)(2), which applies to the promulgation of rules, regulations, and directives. Categorically excluded actions meet the criteria for categorical exclusions under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA. This rule would rescind regulations regarding procedures for the construction and financing of public highway bridges over dams constructed and owned by or for the United States. FHWA does not anticipate any adverse environmental impacts from this proposed rule, and no unusual circumstances are present under 23 CFR 771.117(b).

H. Executive Order 13175 (Tribal Consultation)

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FHWA has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175.

I. Regulation Identifier Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

J. Rulemaking Summary, 5 U.S.C. 553(b)(4)

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found at *regulations.gov*, under the docket number.

List of Subjects in 23 CFR part 630

Government contracts, Grant programs – transportation, Highway safety, Highways and roads, Reporting and recordkeeping requirements, Traffic regulations.

Issued in Washington, DC, under authority delegated in 49 CFR 1.85.

Gloria M. Shepherd
Executive Director
Federal Highway Administration

For the reasons stated in the preamble, FHWA proposes to revise title 23, Code of Federal Regulations, part 630, as set forth below

PART 630 – PRECONSTRUCTION PROCEDURES

1. The authority citation for part 630 is revised to read as follows:

23 U.S.C. 106, 109, 112, 115, 315, and 402(a); Sec. 1110, 1501, and 1503 of Pub. L. 109-59, 119 Stat. 1144; Pub. L. 105-178, 112 Stat. 193; Pub. L. 104-59, 109 Stat. 582; Pub. L. 97-424, 96 Stat. 2106; Pub. L. 90-495, 82 Stat. 828; Pub. L. 85-767, 72 Stat. 896; Pub. L. 84-627, 70 Stat. 380; Pub. L. 112-141, 126 Stat. 405, sections 1303 and 1405; and 23 CFR 1.32 and 49 CFR 1.81 and 1.85.

Subpart H – [Removed and Reserved]

2. Remove and reserve subpart H, consisting of §§ 630.801 through 630.803.