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Federal Highway Administration

23 CFR Part 630

[Docket No. FHWA-2025-0019]

RIN 2125-AG26

Rescinding Regulations on Procedures for Advance Construction of Federal-aid Projects

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FHWA proposes to rescind a specific provision of the rule and regulations issued on March 30, 1990, Advance Construction of Federal-aid Projects.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF 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 (65 FR 19477) or you may visit www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For questions about this rulemaking, please contact Mr. Anthony DeSimone, FHWA Office of Infrastructure, 317-226-5307, or via email at Anthony.DeSimone@dot.gov. For legal questions, please contact Mr. David Serody, FHWA Office of Chief Counsel, 202-366-4241, or via email at David.Serody@dot.gov. Office hours for FHWA are from 8 a.m. to 4:30 p.m., eastern time (E.T.), Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online at www.regulations.gov using the docket number listed above. Electronic retrieval assistance and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of Federal Register's website at www.federalregister.gov and the U.S. Government Publishing Office's website at www.GovInfo.gov.

I. General Discussion

FHWA is proposing to rescind a specific provision of the rule issued on December 8, 1983, via 48 FR 54972, Advance Construction of Federal-Aid Projects, as amended on March 30, 1990, via 55 FR 11902. This provision is part of FHWA regulations, codified at 23 CFR part 630, subpart G, that prescribe procedures for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the State, known as Advance Construction (AC). 23 CFR 630.701. Advance construction is authorized under 23 U.S.C. 115; under the statute, FHWA may authorize a State to proceed with a project authorized under title 23, U.S.C. without the use of Federal funds while preserving eligibility for future Federal-aid

funds. After an AC project is authorized, the State may convert the project to regular Federal-aid funding provided Federal funds are made available for the project. For the reasons explained below, FHWA is proposing to rescind a specific provision of those regulations, 23 CFR 630.705(b), as FHWA believes that this provision is unnecessary.

On December 8, 1983, FHWA issued a regulation revising FHWA's regulations concerning AC projects that existed at the time. Among the changes made, FHWA revised 23 CFR 630.703 to state: "Project designations [for advance construction projects] shall be the same as for regular Federal-aid projects except that until the project is converted to a regular Federal-aid project, the prefix letters 'AC' for advance construction shall be used as the first letters of each project designation." *See* 48 FR 54974. In issuing this provision, the preamble only stated that "[p]rovisions for submitting programs and making project designations for advance construction projects now comprise § 630.703." On June 9, 1989, FHWA revised its AC regulations, moving the contents of what was previously 23 CFR 630.703 to 23 CFR 630.705, while only noting that regular AC procedures would then be contained in 23 CFR 630.705. *See* 55 FR 11902. Through this 1989 rule, FHWA modified 23 CFR 630.705(b) to read: "Project numbers shall be identified by the letters 'AC' preceding the regular project number prefix." *See* 55 FR 11903. This provision, 23 CFR 630.705(b) has not been changed since.

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. The requirements in 23 CFR 630.705(b) are not required by 23 U.S.C. 115. In addition, FHWA's current process of determining which projects are advance construction projects, versus Federal-aid projects where Federal-aid funds have already been obligated, does not require the use of the prefix "AC." Accordingly, FHWA is proposing to eliminate this regulatory provision.

II. 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 proposed rule would rescind regulations that are not in alignment with current FHWA process. For that reason, FHWA does not believe there are any costs to this rulemaking, as opposed to the deregulatory benefit of removing unnecessary provisions from the Code of Federal Regulations.

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 rule is not an E.O. 14192 regulatory action. This rulemaking 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 rule would not have a significant economic impact on a substantial number of small entities; therefore, an analysis is not included. This rule would only remove a provision that is not in accordance with current FHWA processes.

D. Unfunded Mandates Reform Act

This proposed rule would 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 does 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 not in accordance with current FHWA processes. 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 amend 23 CFR part 630 as set forth below:

PART 630 – PRECONSTRUCTION PROCEDURES

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

Authority: 23 U.S.C. 106, 109, 112, 115, 315, 320, 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; 23 CFR 1.32 and 49 CFR 1.81 and 1.85, and Pub. L. 112-141, 126 Stat. 405, sections 1303 and 1405.

§630.705 [Amended]

2. Amend § 630.705 by removing and reserving paragraph (b).

