

## Background

The FHWA published an interim final rule on part 630, subpart G on July 19, 1995, at 60 FR 36991. Interested persons were invited to submit comments to FHWA Docket No. 95–10. (The FHWA rearranged its docket system to accord with the electronic system adopted by the Department of Transportation in 1997. The FHWA Docket No. 95–10 was transferred and scanned as FHWA Docket No. 1997–2262.) On May 1, 2003 (68 FR 23239), the FHWA published a notice of proposed rulemaking (NPRM) proposing to remove certain provisions that limit the approval of advance construction projects and that allow for the payment of bond interest cost. Advance construction authority allows States to advance the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the States.

Section 115, title 23, U.S. Code, authorizes advance construction projects. After FHWA approval, States can initiate the construction of a Federal-aid highway project using State funds without obligating Federal funds. Later, the State can request that the project be converted to a regular Federal-aid project by obligating all or a portion of the Federal share, provided that Federal-aid funds and obligation authority are available. The Federal government is only committed to the State for the amount of Federal funds obligated.

Section 308 of the NHS Act (Pub. L. 104–59, 109 Stat. 568, November 28, 1995), which replaced section 115(d) of title 23, U.S.C., requires that advance construction projects be on the approved Statewide Transportation Improvement Program (STIP), instead of requiring that future year authorizations be in effect when the advance construction project is approved. The STIP is a financially constrained program that covers a period of at least three years. This change allows the States more flexibility in financing projects and developing financial plans, and provides an opportunity for States to begin construction earlier.

Pre-construction procedures are found at 23 CFR part 630. The limitations outlined in § 630.707 are no longer valid, and will be removed, due to the changes made to title 23, U.S.C., section 115(d) by the NHS Act.

Section 1226(a) of the TEA–21, Public Law 105–178, 112 Stat. 107 (1998), as amended by section 9003(a) of Public Law 105–206, 112 Stat. 838 (1998), revised 23 U.S.C. 115 by removing obsolete subsections relating to payment of bond interest on certain Interstate

construction projects. Based on changes in the law relating to payment of bond interest on certain Interstate construction projects, the FHWA removes §§ 630.705(c) and (d), and 630.711.

## Discussion of Comments

We received one comment to the docket from a private individual. The comment welcomed changes in giving States more flexibility in financing projects and developing financial plans which will allow projects to begin construction earlier; and agreed that the FHWA should remove §§ 630.705(c) and (d), and 630.711. The comment also listed other benefits of the rule change including better use of taxpayers' dollars and stimulating the economy. While the FHWA agrees with the comment, the primary reason for the rule change is to conform to revisions in the authorizing statute.

## Conclusion

Since no comments were received opposing the language proposed in the NPRM, the FHWA is adopting the revisions proposed in the NPRM as final without change.

## Rulemaking Analyses and Notices

### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has considered the impact of this final action and has determined that it is not a significant rulemaking action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. This action will not adversely affect, in a material way, any sector of the economy. In addition, this final rule will not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements or grants. This action amends current regulations governing the advance construction of Federal-aid projects based on changes in law. It is not anticipated that this action will affect the Federal funding allocated to the States.

### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act [5 U.S.C. 601–612], the FHWA has evaluated the effects of this action rule on small entities. The FHWA believes that this action will not have a significant economic impact on a substantial number of small entities.

States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

### *Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this final rule will not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this final rule directly preempts any State law or regulation.

### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

### *Unfunded Mandates Reform Act of 1995*

This final action will not impose a Federal mandate resulting in the expenditure by State, local, tribal governments, in the aggregate, or by the sector, of \$100 million or more in any year. (2 U.S.C. 1531 *et seq.*)

### *Executive Order 12630 (Taking of Private Property)*

This action will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights.

### *Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### *Executive Order 13045 (Protection of Children)*

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This action does not involve an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.