

compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 25, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-10727 Filed 4-30-03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. FHWA-1997-2262;
Formerly FHWA 95-10]

RIN 2125-AD59

Advance Construction of Federal-Aid Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing to amend the regulation for advance construction of Federal-aid projects by removing the provisions that prescribe the policies and procedures for the execution of the project agreement for Federal-aid projects and for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the States. These provisions are no longer consistent with section 115 of title 23, United States Code (U.S.C.), due to technical amendments provided in the National Highway System Designation Act of 1995 (NHS Act) and the Transportation Equity Act for the 21st Century (TEA-21).

DATES: Comments must be received on or before June 30, 2003.

ADDRESSES: Mail or hand deliver comments for the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, or submit electronically at <http://dms.dot.gov/submit>. 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 you may print the acknowledgement 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 the U.S. 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 <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Max Inman, Federal-aid Financial Management Division, (202) 366-2853, or Mr. Steve Rochlis, Office of the Chief Counsel, (202) 366-1395, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at <http://www.archives.gov> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>.

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.)

Section 115 of title 23, U.S.C., provides for the authorization of advance construction projects. This

statute allows States to advance the construction of Federal-aid highway projects without requiring that Federal funds be obligated at the time the FHWA approves the project. States may proceed with projects using only State funds and then request that Federal funds be made available at a later time. The State may request that a project be converted to a regular Federal-aid project at any time provided that sufficient Federal-aid funds and obligation authority are available. The State may request a partial conversion where only a portion of the Federal share of project costs is obligated and the remainder may be converted at a later time provided that funds are available. Only the amount converted is an obligation of the Federal Government.

Section 308 of the NHS Act (Pub. L. 104-59, 109 Stat. 568, November 28, 1995) replaced 23 U.S.C. 115(d), relating to the amount of advance construction that may be authorized. The previous limitation required that future year authorizations be in effect one year beyond the fiscal year for which an advance construction application was sought, thus limiting that States' flexibility to advance construct projects during the final year of an authorization act. The NHS Act replaced the limitation with a requirement that advance construction projects be on the approved Statewide Transportation Improvement Program (STIP). The STIP covers a period of at least three years and is a financially constrained program which is not limited to the period of the authorization act. This change provided the States with more flexibility in financing projects and developing financial plans which in turn allows more projects to begin construction earlier.

The FHWA regulation governing the pre-construction procedures is found at 23 CFR part 630. Currently, § 630.707 outlines the limitations are no longer in effect after the changes made to title 23, U.S.C., section 115(d) by the NHS Act. Therefore, the FHWA proposes to remove § 630.707.

Section 1226(a) of the TEA-21, Pub. L. 105-178, 112 Stat. 107 (1998), as amended by Pub. L. 105-206, 112 Stat. 838 (1998), revised 23 U.S.C. 115 by removing subsections (b)(2) and (b)(3) relating to payment of bond interest on certain Interstate construction projects because it is obsolete; removed subsection (c) relating to completion of projects; and redesignated subsection (d) as (c). Based on changes in the law, the FHWA proposes to remove § 630.705 (c), § 630.705 (d) and

§ 630.711 relating to the payment of bond interest.

Discussion of Comments

We received five comments, all from State transportation departments (California, Massachusetts, North Dakota, Virginia, and Washington). Each comment welcomed changes in giving the States flexibility to partially convert regular Federal-aid projects. One comment (North Dakota) recommended that the regulation clearly state that a project or partial project can be converted to a regular Federal-aid project. Two of the five comments (California and Massachusetts) proposed clearer language to the regulation in regard to limitation. These States recommended that the regulation read that an advance construction project is limited to a State's expected apportionment of authorized funds which are eligible to finance the project. While the FHWA agrees that these recommendations will help clarify, we believe by removing the sections we propose to remove that the regulation will be clearer and easier to understand.

Rulemaking Analyses and Notices

All comments received before close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has considered the impact of this proposal 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 would be minimal; therefore, a full regulatory evaluation is not required. These proposed 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 or grants. This rulemaking proposes to amend current regulations governing the advance construction of Federal-aid projects based on changes in law. It is not anticipated that these proposed changes would affect the Federal funding allocated to the states. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

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

Executive Order 13132 (Federalism)

This proposed 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 proposal would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this proposal 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 proposed action would 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 proposed action would 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 proposed 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 proposed action 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.

Paperwork Reduction Act

This proposed action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment. Therefore, an environmental impact statement is not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (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 April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 630

Bonds, Government contracts, Grant programs; transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: April 25, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, as set forth below:

PART 630—[REVISED]

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

Authority: 23 U.S.C. 106, 109, 315, 320, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart G—Advance Construction of Federal-Aid Projects [Revised]**§ 630.705 [Amended]**

2. In § 630.705, remove paragraphs (c) and (d).

§ 630.707 [Removed and Reserved]

3. Remove and reserve § 630.707.

§ 630.711 [Removed]

4. Remove § 630.711.

[FR Doc. 03-10692 Filed 4-30-03; 8:45 am]

BILLING CODE 4910-22-P

LIBRARY OF CONGRESS**Copyright Office****37 CFR Part 262**

[Docket Nos. 2002-1 CARP DTRA3 and 2001-2 CARP DTNSRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is requesting comment on proposed regulations that set rates and terms for the use of sound recordings in eligible nonsubscription

transmissions for the 2003 and 2004 statutory licensing period, and for the use of sound recordings in transmissions made by new subscription services from 1998 through December 31, 2004, in addition to the making of ephemeral recordings necessary for the facilitation of such transmissions. The rates and terms do not pertain to the use of sound recordings in digital transmissions of simulcasts of AM and FM radio broadcast programming (including transmissions or retransmissions thereof by third parties), transmissions made by certain noncommercial entities, and small commercial webcasters who elect to operate under an agreement negotiated pursuant to the Small Webcasters Settlement Act of 2002.

DATE: Comments are due no later than June 2, 2003.

ADDRESSES: An original and five copies of any comment shall be delivered by hand to: Office of the General Counsel, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE., Washington, DC 20559-6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024-0977.

FOR FURTHER INFORMATION CONTACT:

David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380; Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), Pub. L. 104-39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly the sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a new compulsory license for nonexempt noninteractive digital subscription transmissions. 17 U.S.C. 114(f).

Section 114 was later amended with the passage of the Digital Millennium Copyright Act of 1998 ("DMCA" or "the Act"), Pub. L. 105-304, to cover additional digital audio transmissions. These include "eligible nonsubscription transmissions" and those transmissions made by "new subscription services."

For purposes of the section 114 license, an "eligible nonsubscription transmission" is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The

transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. See 17 U.S.C. 114(j)(6). A "new subscription service" is "a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription or a preexisting satellite digital audio radio service." 17 U.S.C. 114(j)(8).

In addition to expanding the current section 114 license, the DMCA also created a new statutory license to allow for the making of ephemeral reproductions for the purpose of facilitating certain digital audio transmissions, including those made by eligible nonsubscription services and new subscription services.

The procedure for setting the rates and terms for these two statutory licenses is a two-step process. 17 U.S.C. 112(e)(3), (4), and (6) and 17 U.S.C. 114(f)(2). The first step requires the Librarian of Congress to initiate a voluntary negotiation period to give interested parties an opportunity to determine the applicable rates and terms through a less formal process. However, if the parties are unable to reach an agreement during this period, sections 112(e)(4) and 114(f)(2)(B) directs the Librarian of Congress to convene a three-person Copyright Arbitration Royalty Panel ("CARP") for the purpose of determining the rates and terms for the compulsory license upon receipt of a petition filed in accordance with 17 U.S.C. 803(a)(1).

The Library of Congress recently conducted a CARP proceeding which produced the royalty rates and terms for these licenses applicable to eligible nonsubscription services for the period from October 28, 1998, to December 31, 2002. See 67 FR 45239 (July 8, 2002). In accordance with the time frame set forth in the law for the purpose of setting rates and terms for use of the section 114 license by eligible nonsubscription services, the Library published a notice initiating a six-month voluntary negotiation period to adjust the rates and terms for eligible nonsubscription services for the 2003-2004 period. See 67 FR 4472 (January 30, 2002). No settlement was reached at the end of the period. Consequently, two separate petitions were filed with the Copyright Office by the Recording Industry Association of America, Inc. ("RIAA"); and IOMedia Partners, Inc., 3WK, Digitally Imported Radio, IM Networks,