

former spouse as part of a property distribution incident to a decree of divorce, annulment, or legal separation to continue after the employee's death. Garnishment of benefits for alimony or child support is dealt with in part 350 of this chapter.

(b) Benefits subject to this part. Only the following benefits or portions of benefits under the Railroad Retirement Act are subject to this part:

\* \* \* \* \*

(3) Employee annuity increase as provided under section 3(f) of the Act; and

\* \* \* \* \*

3. Section 295.2 is amended by adding a new definition of "Former spouse" and by revising the definition of "spouse" to read as follows:

**§ 295.2 Definitions.**

\* \* \* \* \*

*Former spouse* means the former husband or wife of an employee who, on or before the date of a court order, was married to the employee and that marriage has ended by final decree of divorce, dissolution, or annulment.

\* \* \* \* \*

*Spouse* means the husband or wife of an employee who, on or before the date of a court order, was married to the employee and that marriage has not ended by final decree of divorce, dissolution, or annulment.

**§ 295.3 [Amended]**

4. Section 295.3, paragraph (d) is amended by replacing all references to "Deputy General Counsel" with references to "General Counsel".

5. Section 295.4 is amended as follows:

a. By replacing wherever they appear all references to "Deputy General Counsel" with references to "General Counsel"

b. By replacing all references to the "Associate Executive Director for Retirement Claims" with references to the "Director of Retirement Benefits"

c. By replacing "bs" with "be" in the second to last sentence of paragraph (b)(2)(ii)

d. By adding the phrase "pertaining to the employee" at the end of the second sentence of the introductory paragraph of paragraph (c)

e. By adding the phrase "pertaining to the employee" at the end of the first sentence of paragraph (d)(2)

f. By capitalizing the word "Board" at the end of the last sentence in paragraph (d)(2)

g. By capitalizing the word "Board" in the last sentence of paragraph (d)(4)

h. By adding the following new paragraph (b)(4) to read as follows:

**§ 295.4 Review of documentation.**

\* \* \* \* \*

(b) \* \* \*

(4) Unless the order expressly provides otherwise, the Board will deduct the amount specified by the order from any annuity paid to the employee, whether the employee has retired based on age or on disability.

\* \* \* \* \*

6. Section 295.5 is amended as follows:

a. By adding in paragraph (a) the phrase " , except as provided in paragraph (f)(4) of this section," in the second sentence between the words "and" and "shall"

b. By substituting the word "on" for the word "in" in paragraph (d) in the phrase that reads "to act in behalf of the spouse or former spouse"

c. By adding the phrase "Except as provided in paragraph (4) of this paragraph" to the beginning of the first sentence of the introduction to paragraph (f)

d. By substituting references to "Deputy General Counsel" with references to "General Counsel" in paragraph (g) and

e. By adding a new paragraph (f)(4) to read as follows:

**§ 295.5 Limitations.**

\* \* \* \* \*

(f) \* \* \*

(4) If the employee dies on or after August 17, 2007, a former spouse who is receiving a portion of the employee's annuity pursuant to a court decree or property settlement compliant with this part may continue to receive a portion of the employee's tier II benefit component unless the court decree or property settlement requires such payment to terminate upon the death of the employee.

\* \* \* \* \*

**§ 295.6 [Amended]**

7. Section 295.6 is amended as follows:

a. In paragraph (b) by substituting "General Counsel" for "Deputy General Counsel" and by substituting "Director of Retirement Benefits" for all references to the "Associate Executive Director for Retirement Claims"

b. By adding the word "a" to the first sentence of paragraph (b) before the word "request"

c. By adding the word "a" to the first sentence of paragraph (c) before the word "signed".

8. Section 295.7 is amended by redesignating paragraph (e) as paragraph (e)(1) and adding a new paragraph (e)(2) to read as follows:

**§ 295.7 Miscellaneous.**

\* \* \* \* \*

(e) \* \* \*

(2) Where all documentation required by this part is in the Board's records pertaining to the employee prior to the time the employee annuity is awarded, but where the Board due to clerical oversight fails to withhold the amount awarded by the court order, then the Board shall begin deduction from the employee annuity with the month the error is discovered, and shall pay the amount which should have been withheld pursuant to this part to the spouse or former spouse. The amount paid to the spouse or former spouse representing months for which the amount under the order was not timely withheld shall be an erroneous payment to the employee within the meaning of section 10 of the Railroad Retirement Act. This section shall not apply where the Board has attempted to contact the spouse or former spouse at the time the employee annuity is awarded pursuant to section 295.4(d).

Dated: March 3, 2008.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. E8-4381 Filed 3-5-08; 8:45 am]

BILLING CODE 7905-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 630**

[FHWA Docket No. FHWA-2007-0020]

RIN 2125-AF23

**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 revise the regulation for advance construction of Federal-aid projects by: Removing the restriction that a State must obligate all of its allocated or apportioned funds, or demonstrate that it will use all obligation authority allocated to it for Federal-aid highways and highway safety construction, prior to the approval of advance construction projects; and clarifying that advance construction procedures may be used for all categories of Federal-aid highway funds, and that any available Federal-aid funds for which a project is eligible may be used when a project is converted

to a Federal-aid project. These revisions will make the regulation consistent with the advance construction statute, which was amended by a provision enacted in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

**DATES:** Comments must be received on or before May 5, 2008. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590. You may also submit comments electronically at <http://www.regulations.gov>, or fax comments to (202) 493-2251. 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 acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the 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://DocketsInfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dale Gray, Federal-aid Financial Management Division, (202) 366-0978, or Mr. Steven Rochlis, Office of the Chief Counsel, (202) 366-1395, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 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 and Filing**

You may submit or retrieve comments online through the Federal eRulemaking portal at <http://www.regulations.gov>. It is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by accessing the Office of the **Federal Register's** home page at: [http://](http://www.archives.gov)

[www.archives.gov](http://www.archives.gov) or the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

##### **Background**

Section 115 of title 23, United States Code, permits the Secretary to authorize States to advance the construction of Federal-aid highway projects without requiring that Federal funds be obligated at the time the FHWA approves a project. The State may proceed with an advance construction project using State funds as no present or future Federal funds are actually committed to the project. At any time the State may request that the project be converted to a Federal-aid project provided that sufficient Federal-aid funds and obligation authority are available. A State also may request a partial conversion where only a portion of the Federal share of project costs is obligated and reimbursed; and the remainder may be converted at a later time provided that funds are available. Only the amount converted becomes an obligation of the Federal Government.

Section 1501 of SAFETEA-LU (Pub. L. 109-59, 119 Stat. 1144) amended 23 U.S.C. 115 to remove a restriction that a State must obligate all of its allocated or apportioned funds, or demonstrate that it will use all obligation authority allocated to it for Federal-aid highways and highway safety construction, prior to the approval of advance construction projects. Section 1501 also amended the statute to clarify that advance construction procedures can be used for all categories of Federal-aid highway funds and that when a project is converted to a regular Federal-aid project, any available Federal-aid funds may be used to convert a project which is eligible. The FHWA regulations concerning advance construction, which reflect the advance construction requirements prior to the enactment of SAFETEA-LU, are therefore no longer consistent with the statute.

##### **Discussion of Proposed Change**

###### *Section 630.703 Eligibility*

In this NPRM the FHWA proposes to revise the regulations for advance construction, contained in 23 CFR 630.703, so they are consistent with the advance construction statute as amended by section 1501 of SAFETEA-LU. These proposed revisions would make two changes. First, they would remove the restriction that a State must obligate all of its allocated or apportioned funds, or demonstrate that it will use all obligation authority allocated to it for Federal-aid highways and highway safety construction prior to

the approval of advance construction projects. Second, the revisions will clarify that advance construction procedures may be used for all categories of Federal-aid highway funds, and that any available Federal-aid funds may be used when a project is converted to a Federal-aid project. These revisions will make 23 CFR part 630 consistent with the advance construction statute at 23 U.S.C. 115, as amended by section 1501 of SAFETEA-LU.

###### *Rulemaking Analyses and Notices*

All comments received before the 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. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

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

The FHWA has determined preliminarily that this action is not a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This proposed rule will not adversely affect, in a material way, any sector of the economy. This proposed action would revise the regulation for advance construction of Federal-aid projects by removing the restriction that a State must obligate all of its allocated or apportioned funds, or demonstrate that it will use all obligation authority allocated to it for Federal-aid highways and highway safety construction, prior to the approval of advance construction projects. This proposal also clarifies that advance construction procedures may be used for all categories of Federal-aid highway funds, and that any available Federal-aid funds for which the project is eligible may be used when a project is converted to a Federal-aid project. There will not be any additional costs incurred by any affected group as a result of this rule. In addition, these proposed changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees or loan programs.

Consequently, a regulatory evaluation is not required.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), we have evaluated the effects of this proposed action on small entities and have determined that the proposed action would not have a significant economic impact on a substantial number of small entities. The FHWA certifies that this action will 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, and the FHWA has preliminarily determined that this proposed action would not warrant the preparation of a Federalism assessment. The FHWA has determined that this proposed action would not affect the States' ability to discharge traditional State government functions.

#### *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. Accordingly, the FHWA solicits comments on this issue.

#### *Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

#### *Unfunded Mandates Reform Act of 1995*

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year. (2 U.S.C. 1532) Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to

assess the effects on State, local, and tribal governments and the private sector.

#### *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)*

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause any environmental risk to health or safety that may disproportionately affect children.

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

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

#### *National Environmental Policy Act*

The FHWA has analyzed this proposed action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) and has determined that this proposed action will not have any effect on the quality of the environment.

#### *Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### *Executive Order 13211 (Energy Effects)*

We have analyzed this proposed rule 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 is not required.

#### *Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory section 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 contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

#### **List of Subjects in 23 CFR Part 630**

Reimbursement, Grants programs—transportation, Highways and roads.

Issued on: February 28, 2008.

**James D. Ray,**

*Acting Federal Highway Administrator.*

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

#### **PART 630—PRECONSTRUCTION PROCEDURES**

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

**Authority:** 23 U.S.C. 106, 109, 112, 115, 315, 320, and 402(a); Sec. 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 1.48(b).

#### **Subpart G—Advance Construction of Federal-Aid Projects**

2. Revise § 630.703 to read as follows:

##### **§ 630.703 Eligibility.**

(a) The State Department of Transportation (DOT) may proceed with a project authorized in accordance with title 23, United States Code:

(1) Without the use of Federal funds; and

(2) In accordance with all procedures and requirements applicable to the project other than those procedures and requirements that limit the State to implementation of a project—

(i) With the aid of Federal funds previously apportioned or allocated to the State; or

(ii) With obligation authority previously allocated to the State.

(b) The FHWA, on the request of a State and execution of a project agreement, may obligate all or a portion of the Federal share of a project

authorized to proceed under this section from any category of funds for which the project is eligible.

**§ 630.709 [Amended]**

3. Amend § 630.709 by removing the term “SHA” in each place it appears, and add in its place the term “State Department of Transportation.”

[FR Doc. E8-4338 Filed 3-5-08; 8:45 am]

BILLING CODE 4910-22-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[REG-127770-07]

RIN 1545-BG77

**Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit (REMIC); Hearing**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of public hearing on proposed regulations that would expand the list of permitted loan modifications to include certain modifications of commercial mortgages.

**DATES:** The public hearing is being held on Friday, April 4, 2008, at 10:30 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Friday, March 14, 2008.

**ADDRESSES:** The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224. Send Submissions to CC:PA:LPD:PR (REG-127770-07), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG-127770-07), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-127770-07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Diana Imholtz or Susan Thompson Baker (202) 622-3930; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed rulemaking (REG-127770-07) that was published in the **Federal Register** on Friday, November 9, 2007 (72 FR 63523).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by February 7, 2008 must submit an outline of the topics to be addressed and the amount of time to be allotted to each topic (signed original and eight copies)

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

**LaNita VanDyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E8-4297 Filed 3-5-08; 8:45 am]

BILLING CODE 4830-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[Docket No. EPA-R02-OAR-2008-0004; FRL-8539-1]

**Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for a Specific Source in the State of New Jersey**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. This SIP revision consists of a source-specific reasonably available control technology (RACT)

determination for controlling oxides of nitrogen from the stationary internal combustion engines and boilers operated by the Trigen-Trenton Energy Co., L.P. This action proposes an approval of the source specific RACT determination that was made by New Jersey in accordance with the provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this proposed rule is to approve source-specific emissions limitations required by the Clean Air Act.

**DATES:** Comments must be received on or before April 7, 2008.

**ADDRESSES:** Submit your comments, identified by Docket Number EPA-R02-OAR-2008-0004, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).
- *Fax:* 212-637-3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

*Instructions:* Direct your comments to Docket No. EPA-R02-OAR-2008-0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the