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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 624

[Docket No. FTA–2019–000X]

RIN 2132-AB36

Clean Fuels Grant Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rulemaking rescinds the FTA regulation that implements the Clean Fuels Grants Program, which was rescinded by statute in 2012.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mark Montgomery, Office of Chief Counsel, (202) 366-1017 or mark.montgomery@dot.gov. Office hours are from 9 a.m. to 5:30 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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Background

Part 624 of title 49, Code of Federal Regulations, established the application procedures for the Clean Fuels Grant Program. This part implemented section 3008 of the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. No. 105-178), codified at section 5308 of title 49, United States Code (Section 5308), which required FTA to establish a new grant program intended to assist nonattainment and maintenance areas in achieving or maintaining air quality attainment status, to support emerging clean fuel and advanced propulsion technologies for transit buses, and to create markets for these technologies. Section 20002 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141) repealed section 5308, effectively ending the Clean Fuels Grant Program. For this reason, FTA is issuing this final rule to rescind 49 CFR part 624.

Discussion of the Changes

This action rescinds 49 CFR part 624, which implements the Clean Fuels Grant Program. The statutory basis for this regulation, 49 U.S.C. § 5308, was repealed by MAP-21. While 49 CFR part 624 cites 49 U.S.C. § 5334(a) as additional statutory authority, that statute provides only for the general authority of the Secretary of Transportation to implement statutory transit programs. However, the Secretary may not regulate a program repealed by statute. Thus, the requirements set forth in part 624 are superfluous.

Good Cause for Dispensing with Notice and Comment and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment procedure if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. Additionally, 5 U.S.C. 553(d) provides that an agency may waive the 30-day delayed effective date upon finding of good cause.

Section 20002 of MAP-21 repealed section 5308, effectively ending the Clean Fuels Grant Program. FTA finds good cause that notice and comment for this rule is unnecessary due to the nature of the revisions (i.e., the rule simply carries out the nondiscretionary statutory language found in MAP-21). The statutory language does not require regulatory interpretation to carry out its intent, and comments cannot alter the regulation given that the statute abrogated its purpose. Further, the delayed effective date is unnecessary because the removal of the program was made effective by MAP-21. Accordingly, FTA finds good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) to waive notice and opportunity for comment and the delayed effective date.

RULEMAKING ANALYSES AND NOTICES

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Department of Transportation (DOT) Regulatory Policies and Procedures.

FTA has determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866, and within the meaning of DOT regulatory policies and procedures. This action complies with Executive Orders 12866, 13563 and 13771 to improve regulation.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This final rule is considered an EO 13771 deregulatory action.

Regulatory Flexibility Act

Because FTA finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601–612) do not apply. FTA evaluated the effects of this action on small entities and determined the action would not have a significant economic impact on a substantial

number of small entities. FTA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This rule does not include a Federal mandate that may result in expenditures of \$155.1 million or more in any 1 year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States’ ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. This E.O. applies because State and local governments would be directly affected by the regulation. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.519, Clean Fuels, for further information.

Paperwork Reduction Act

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. FTA has analyzed this rule under the Paperwork Reduction Act and believes that it does not impose additional information collection requirements for the purposes of the Act above and beyond existing information collection clearances from OMB.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule

effects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This rule 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)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order 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.

Executive Order 12898 (Environmental Justice)

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10,

2012) (available online at <https://www.govinfo.gov/content/pkg/FR-2012-05-10/pdf/2012-11309.pdf>) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. All DOT agencies must address compliance with Executive Order 12898 and the DOT Order in all rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities (available online at http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf).

FTA has evaluated this action under the Executive Order, the DOT Order, and the FTA Circular. The rule rescinds the implementing regulations of a program repealed by statute, and FTA has determined that this action will not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

List of Subjects in 49 CFR Part 624

Grant programs—transportation, Mass transportation.

Issued in Washington, DC, under authority delegated in 49 CFR 1.90:

K. Jane Williams,

Acting Administrator

PART 624—[REMOVED AND RESERVED]

In consideration of the foregoing, and under the authority of Public Law 112-141, 49 CFR chapter VI is amended by removing part 624.

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