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Federal Highway Administration

23 CFR Parts 500 and 515

[Docket No. FHWA-2024-0048]

RIN 2125-AG00

Rescinding Requirements Regarding Management and Monitoring Systems

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

ACTION: Final rule; final agency action.

SUMMARY: This final rule rescinds the regulations issued on December 10, 1996, and amended on February 14, 2007, Management and Monitoring, thereby removing obsolete regulations governing transportation management and monitoring systems. Further, FHWA finalizes the proposed updates to the regulations governing risk-based Asset Management Plans by determining that no further action is needed.

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

FOR FURTHER INFORMATION CONTACT: Ms. Tashia J. Clemons, Office of Infrastructure, (202) 493-0551, tashia.clemons@dot.gov; or Mr. David Serody, Office of the Chief Counsel, (202) 366-4241, david.serody@dot.gov, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the 2024 notice of proposed rulemaking (NPRM), and all comments received may be viewed online through the Federal eRulemaking portal at www.regulations.gov. The website 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

On November 3, 2024, FHWA published an NPRM proposing to amend FHWA's regulations governing risk-based Asset Management Plans (AMP) in 23 CFR part 515 and proposing to remove obsolete regulations governing transportation management and monitoring systems in 23 CFR part 500, at 89 FR 89506. In this final rule, FHWA is finalizing the revisions to the regulations in 23 CFR part 500. Further, with respect to the proposed amendments to 23 CFR part 515, FHWA has decided that amendments are no longer necessary so has determined that the appropriate final action is to end that portion of the rulemaking without changing the regulations.

A. AMP Regulations

The NPRM proposed to update the AMP regulations at 23 CFR part 515 to address provisions in the Infrastructure Investment and Jobs Act (Pub. L. 117-58) and to reflect then-current priorities and state-of-practice. Consistent with President Trump's commitment to ending unlawful, unnecessary, and onerous regulations, FHWA is reviewing its existing regulations and ongoing regulatory activities for alignment with law and Administration priorities. FHWA is keeping the existing AMP regulations at 23 CFR part 515 rather than finalize the proposed revisions to the AMP regulations because further rulemaking with respect to these regulations does not align with agency needs, priorities, and objectives. FHWA appreciates the comments received on these proposals and continues to consider the best means of addressing some or all of the issues covered by the NPRM with respect to the AMP regulations and the scope of any agency actions FHWA concludes may be necessary to address these issues. Should FHWA decide at a future date to initiate the same or similar rulemaking with respect to the AMP regulations

at 23 CFR part 515, FHWA will initiate a new rulemaking under a new RIN, consistent with the requirements of the Administrative Procedure Act, 5 U.S.C. 553.

B. Transportation Management and Monitoring System Regulations

In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (Pub. L. 102-240), which added section 303 to title 23 of the United States Code (U.S.C.), requiring the Secretary of Transportation to issue regulations for State development, establishment, and implementation of systems to manage highway pavements and bridges, highway safety, traffic congestion, public transportation facilities and equipment, and intermodal transportation systems. Section 303 also required the Secretary to issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment. The FHWA and the Federal Transit Administration (FTA) subsequently promulgated a final rule implementing 23 U.S.C. 303, codifying the regulations at 23 CFR part 500 (61 FR 67166, Dec. 19, 1996). Section 303 was subsequently repealed by section 1519(b)(1)(A) of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141), and FHWA and FTA no longer use the regulations governing management and monitoring systems at 23 CFR part 500. For these reasons, the NPRM proposed to remove the outdated regulations in 23 CFR part 500. 89 FR 89507 through 89508.

The FHWA received twenty-six (26) comments in response to the NPRM. Multiple commenters, including the American Association of State and Highway Transportation Officials (AASHTO), the Missouri Department of Transportation, the California Department of Transportation (Caltrans) affirmatively supported the removal of the transportation management and monitoring system regulations in 23 CFR part 500. On the other hand, no commenter stated that FHWA should retain the regulations governing management and monitoring systems at 23 CFR part 500. In any event,

because 23 U.S.C. 303, the underlying statutory authority for promulgating part 500, has been repealed, FHWA does not believe there is any valid legal justification for maintaining these regulations.

II. Administrative Procedure Act

Under the Administrative Procedure Act, there must be at least thirty days between publication of a substantive rule and its effective date except “as otherwise provided by the agency for good cause and published with the rule.” *See* 5 U.S.C. 553(d)(3). As FHWA is rescinding a requirement that lacks statutory authority, a period of 30 days between publication and effectiveness is unnecessary. Therefore, FHWA finds good cause to issue this final rule with immediate effectiveness.

III. 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 final rule does not meet the criteria of a “significant regulatory action” under Executive Order (E.O.) 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 final rule rescinds regulations that are currently inoperative. 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 CFR.

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 final rule is not an E.O. 14192 regulatory action. This rule 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 will not have a significant economic impact on a substantial number of small entities; therefore, an analysis is not included. This final rule will only remove regulations that are currently inoperative.

D. Unfunded Mandates Reform Act

This final rule does 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 final 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 will rescind regulations that rely on rescinded statutory authority. FHWA does not anticipate any adverse environmental impacts from this 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 final 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 500

Bridges, grant programs – transportation, Highway traffic safety, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

Issued in Washington, DC, under authority delegated in 49 CFR 1.85.

Gloria M. Shepherd
Executive Director
Federal Highway Administration

PART 500 – [Removed and Reserved]

For the reasons stated in the preamble, under the authority of Pub. L. 112-141, FHWA removes and reserves 23 CFR part 500.