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Federal Highway Administration

23 CFR Part 505

RIN 2125-AG17

Rescinding Regulations on Projects of National and Regional Significance

Evaluation and Rating

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

ACTION: Final rule.

SUMMARY: This final rule rescinds the rule and regulations issued on October 24, 2008, Projects of National and Regional Significance Evaluation and Rating.

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

FOR FURTHER INFORMATION CONTACT: For questions about this final rule, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202-366-1562, or via email at Brian.Hogge@dot.gov. For legal questions, please contact Mr. David Serody, FHWA Office of Chief Counsel, 202-366-4241, or via email at David.Serody@dot.gov. Office hours for FHWA are from 8 a.m. to 4:30 p.m., eastern time (E.T.), Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

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

Through this final rule, FHWA is rescinding the rule issued on October 24, 2008, Projects of National and Regional Significance Evaluation and Rating, via 73 FR 63362, amending 23 CFR part 505. This rule established evaluation, rating, and selection guidelines for funding proposed Projects of National and Regional Significance under the program established by section 1301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59). For the reasons explained below, FHWA has determined that 23 CFR part 505 is unnecessary and will rescind this rule in full.

In 2005, section 1301 of SAFETEA-LU established a program to provide grants to eligible entities for projects of national and regional significance. This provision was repealed by section 1105(c) of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94). As the program is no longer authorized, provisions dealing with program eligibility (23 CFR 505.7), grant criteria (23 CFR 505.9), and project evaluation and rating (23 CFR 505.11) are no longer relevant. As FHWA eliminates 23 CFR part 505, other provisions applicable to previous projects (23 CFR 505.13, 505.15, and 505.17) continue to apply; however, given that the program is no longer authorized, FHWA does not believe it necessary to maintain these provisions going forward. Similarly, with the repeal of this program, FHWA believes that general provisions in 23 CFR part 505 (23 CFR 505.1, 505.3, and 505.5) are no longer needed. Accordingly, FHWA finds good reason to eliminate this regulatory part entirely.

II. Administrative Procedure Act

Under the Administrative Procedure Act (APA), the requirement for prior notice and an opportunity for public comment does not apply when the agency, for good cause, finds that those procedure are "impracticable, unnecessary, or contrary to the public interest." *See* 5 U.S.C. 553(b)(B). The FHWA finds that notice and an opportunity for public comment are unnecessary for this rulemaking because this rulemaking rescinds

regulations that administer a program that has been repealed by Congress. Consequently, these provisions have no effect on projects going forward, so repealing this rule for projects going forward has no substantive effect on the public. Therefore, FHWA finds good cause to issue this final rule without notice and an opportunity for public comment.

Furthermore, under the APA, 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). For similar reasons as above, FHWA finds that a period between this final rule being published and becoming effective is unnecessary as this rulemaking rescinds regulations that administer a program that has been repealed by Congress. These regulations are as equally inoperative at publication as they will be thirty days after publication for projects going forward. 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 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 projects going forward. 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 Code of Federal Regulations.

This regulation is not an E.O. 14192 regulatory action.

B. 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 already inoperative for any future projects.

C. 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.

D. Executive Order 13132 (Federalism Assessment)

The rescission is deregulatory and has little effect on States and local governments, so FHWA anticipates that this rule will not have implications for federalism. Therefore, under section 6(b) of Executive Order 13132, a federalism summary is not required.

E. 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.

F. 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 administering a repealed grant program. FHWA does not anticipate any adverse environmental impacts from this rule, and no unusual circumstances are present under 23 CFR 771.117(b).

G. 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.

H. 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.

I. 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 505

Grant programs – transportation, Highways and roads, Intermodal transportation.

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

Gloria M. Shepherd
Executive Director
Federal Highway Administration

PART 505 – [Removed and Reserved]

For the reasons stated in the preamble, under the authority of Pub. L. 114-94, FHWA removes and reserves 23 CFR part 505.

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