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Federal Highway Administration

23 CFR Part 971

Docket Number [FHWA-2025-0016]

RIN 2125-AG22

Rescinding Regulations Regarding Management Systems Pertaining to the Forest Service and the Forest Highway Program

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FHWA proposes to rescind the regulations issued on February 27, 2004, Federal Lands Highway Program; Management Systems Pertaining to the Forest Service and the Forest Highway Program.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at www.regulations.gov. 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 may print the acknowledgment 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 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 www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Corey Bobba, Office of Federal Lands, (202) 366-9489, corey.bobba@dot.gov; or 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 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online at www.regulations.gov using the docket number listed above. Electronic retrieval assistance and guidelines are available on the website. It 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

Through this proposed rule, FHWA proposes to rescind the rule issued on February 27, 2004, Federal Lands Highway Program; Management Systems Pertaining to the Forest Service and the Forest Highway Program, via 69 FR 9476, amending 23 CFR part 971. This rule provided for the development and implementation of safety, bridge, pavement, and congestion management systems for transportation facilities providing access to and within the National Forests and Grasslands and funded under the Federal Lands Highway Program (FLHP) as required by the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178) (June 9, 1998). For the reasons explained below, FHWA has determined that this part is unnecessary and will rescind it in full.

Section 1115(d)(1) of TEA-21 amended the version of 23 U.S.C. 204 that existed at the time to add a paragraph (a)(6) stating: “The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highway program.” The roads funded under the FLHP included Forest Highways. Through 23 CFR part 971, FHWA addressed the management systems for the Forest Service and the Forest Highway Program. *See* 69 FR at 9476-77.

On July 6, 2012, Congress enacted the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141). Section 1119(a) of MAP-21 removed the FLHP under 23 U.S.C. 204, replacing that program with the Tribal Transportation Program (23 U.S.C. 202), the Federal Lands Transportation Program (23 U.S.C. 203), and the Federal Lands Access Program (23 U.S.C. 204). In doing so, Congress repealed the previous version of 23 U.S.C. 204(a)(6) and replaced it with a similar provision at 23 U.S.C. 201(c)(5), which has remained unchanged. Under that provision, FHWA “and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, implement safety, bridge, pavement, and congestion management systems for facilities funded under the tribal transportation program and the Federal lands transportation program in support of asset management.”

The FHWA first notes that the current regulations have become outdated due to subsequent statutory changes, and FHWA has issued more up-to-date guidance.¹ For instance, the definition of the Forest Highway Program in § 971.104 refers to the “public lands highway funds allocated each fiscal year, as is provided in 23 U.S.C. 202, for projects that provide access to and within the National Forest system, as described in 23 U.S.C. 202(b) and 23 U.S.C. 204.” This refers to the requirements that existed prior to the enactment of MAP-21, where Congress appropriated funds specifically for forest

¹ <https://highways.dot.gov/federal-lands/transportation>.

roads as part of the FLHP under 23 U.S.C. 204, which FHWA then allocated pursuant to 23 U.S.C. 202.

In considering the changes to be made to 23 CFR part 971, FHWA is guided by the Secretary of Transportation's new policy to reduce regulatory burdens wherever possible. Under that policy, unless a regulatory standard is required by statute, the Secretary proposes eliminating that requirement. In accordance with that policy, FHWA finds it significant that Congress, in enacting MAP-21, retained the same general requirements for asset management in 23 U.S.C. 201(c)(5) but replaced the phrase "develop by rule" with the word "implement." To the extent that FHWA and Federal land management agencies agree that safety, bridge, pavement, and congestion management systems are appropriate for certain facilities, FHWA believes such systems can be implemented without the need for regulations. The FHWA seeks comment on any reasons to rescind or not to rescind these regulations.

II. 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 proposed 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 proposed rule would rescind outdated regulations regarding asset management. It could result in some cost savings for the Forest Service, but FHWA does not have the data to estimate the reduction in costs that would result from this NPRM. The Agency requests comment on any impacts that could result from removing the provisions identified in this NPRM.

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 proposed 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 proposed rule would only remove regulations governing management systems that guide the Forest Service in developing transportation plans and making resource allocation decisions.

D. Unfunded Mandates Reform Act

This proposed 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 proposed 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 would remove requirements regarding safety, bridge, pavement, and congestion management systems that are currently outdated.

FHWA does not anticipate any adverse environmental impacts from this proposed 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 971

Bridges, Grant program – transportation, Highways and roads, National forests, Public lands, Safety, Transportation

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

Gloria M. Shepherd
Executive Director
Federal Highway Administration

For the reasons stated in the preamble and under the authority of 23 U.S.C. 204, 315; 42 U.S.C. 7410 et seq.; and 49 CFR 1.48, FHWA proposes to remove and reserve 23 Code of Federal Regulations part 971.

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