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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 470

[FHWA Docket No. FHWA-97-2394]

RIN 2125-AD74

Federal-Aid Highway System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA adopts as final an interim final rule that amends the regulation on Federal-aid highway systems to incorporate changes made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the National Highway System Designation Act of 1995 (NHS Act). The purpose of adopting the interim final rule as final is to reflect statutory changes in defining the Federal-aid highway systems, reduce regulatory requirements and simplify recordkeeping requirements imposed on States, and consolidate (in appendices to the regulation) all nonregulatory guidance material issued previously by the FHWA on this subject.

EFFECTIVE DATES: June 26, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Clark, Office of Interstate and Border Planning (HEPI), (202) 366-5006, or Ms. Grace Reidy, Office of the Chief Counsel (HCC-40), (202) 366-6226. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. 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

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may also reach the Office of the Federal Register's Home page at: <http://www.archives.gov> and the Government

Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

Background

The FHWA published an interim final rule on part 470, subpart A on June 19, 1997, at 62 FR 33351. Interested persons were invited to submit comments to FHWA docket No. FHWA-97-2394. The interim final rule amended the regulation on Federal-aid highway systems to (1) reflect statutory changes made by the ISTEA (Pub. L. 102-240, 105 Stat. 1914 (1991)) and the NHS Act (Pub. L. 104-59, 109 Stat. 568 (1995)); (2) reduce regulatory requirements and simplify recordkeeping requirements imposed on the States; and (3) consolidate, in appendices to the regulation, all relevant nonregulatory guidance previously issued in the FHWA's policy memoranda and the "Federal-Aid Policy Guide." This rule has been in effect since July 21, 1997.

Summary of Comments

The FHWA received four comments, two from State transportation departments (Texas and Illinois), one from the Advocates for Auto and Highway Safety (AAHS) and one from a private individual.

The Illinois DOT found the interim final rule to be satisfactory.

The Texas DOT commented that Appendix B to part 470 does not address access points to the Interstate System as required by the FHWA and asked for a clarification. The policy on Interstate System access points is addressed in a separate policy statement that was updated and published in the **Federal Register** on February 11, 1998, at 63 FR 7045. It can also be accessed at <http://www.fhwa.dot.gov/programadmin/fraccess.html>.

The Texas DOT also commented that the FHWA omitted an obsolete requirement related to the former Interstate Cost Estimates.

The AAHS objected to issuing this material as an interim final rule with an after-the-fact comment period. The FHWA believes that because the amendments made in the interim final rule were statutorily mandated, incorporated existing policy, or were well-established procedures, requirements, or practices, that prior notice and an opportunity for comment was unnecessary. The amendments made by the interim final rule were specifically designed to simplify administrative procedures, minimize regulatory burdens, and provide flexibility for accomplishing required systems. Of the two State DOTs that commented, both were in favor of the change and only one pointed out a

possible omission mentioned previously. Additionally, the FHWA was careful in the regulatory wording to refer to the appendices as guidance to be considered in carrying out the procedures of the regulation.

The private individual correctly pointed out an error in the miles to kilometers conversion factor noted in the preamble. The rule language in the interim final rule uses the correct factor.

Conclusion

For the reasons stated above, the FHWA adopts as a final rule the interim final rule published on June 19, 1997, at 62 FR 33351. The FHWA acknowledges that the definition of "consultation" in this rulemaking for Part 470 of title 23, CFR, is not the same as the definition of "consultation" in Part 450 of title 23, CFR. This action does not change the definition in Part 450 or the way the FHWA administers Part 450.

Rulemaking Analyses and Notices

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rule will be minimal. This action merely adopts as final the interim final rule that has been in effect since July 21, 1997.

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these 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.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this final rule on small entities and has determined it will not have a significant economic impact on a substantial number of small entities. This final rule adopts as final the interim final rule that clarifies, streamlines, and simplifies Federal-aid highway systems policies for modification and management of the systems. This rule reduces the administrative burden on the States associated with the Federal-aid systems actions.