

regulation outlined the procedures for the withdrawal of Interstate System segments and the substitution of public mass transit or highway projects.

In 1976, the Congress expanded the Interstate withdrawal and substitution program to allow substitution projects to include highway projects as well as transit projects (*see* Federal-Aid Highway Act of 1976 (Pub. L. 94–280, 90 Stat. 425, May 5, 1976)). The Federal-Aid Highway Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, November 6, 1978) further amended 23 U.S.C. 103(e)(4) by establishing time limits for withdrawals and substitute project approvals. Nonessential Interstate System segments passing through and connecting urbanized areas within a State could also be withdrawn. Withdrawals were to receive approval by September 30, 1983, unless the route was under judicial injunction prohibiting construction at the time of enactment of the 1978 Highway Act. All substitute projects were to be approved no later than September 30, 1983. Furthermore, all substitute projects were to be under construction or under contract for construction no later than September 30, 1986, provided sufficient funds were available. Therefore in 1980, the FHWA and the FTA amended 23 CFR part 476 to comply with these changes.<sup>2</sup>

In 1987, Congress again modified the Interstate withdrawal and substitution program in a number of ways (*see* Surface Transportation and Uniform Relocation Assistance Act of 1987 ((Pub. L. 100–17, 101 Stat. 132, April 2, 1987))). A cost adjustment provision was enacted to assure that the “buying power” of the value of the withdrawals was maintained over time. A portion of the annual funding authorized for highway and transit substitute projects each year was set aside to be allocated on a discretionary basis. Open to traffic Interstate segments could no longer be withdrawn. The regulations were not revised to reflect these provisions. Instead, the FHWA and FTA administered the program under the 1980 regulations and the modifications made in the 1987 legislation.

In 1998, the Congress enacted the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) and recognized the expiration of the Interstate withdrawal and substitution program by removing 23 U.S.C. 103(e)(4).<sup>3</sup> Therefore, since the time limits for the Interstate withdrawal and substitution program have long expired, the

underlying statutory authority for 23 CFR part 476 has been eliminated, and the Interstate withdrawal and substitution program no longer exists, it is appropriate to remove 23 CFR part 476 from the Code of Federal Regulations.

The removal of 23 CFR part 476 does not affect prior obligations under the Interstate withdrawal and substitution program, nor does it affect Interstate withdrawal and substitution funds that are still available. Rather, section 1045(b)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) specifies that Interstate withdrawal and substitution funds remain available until expended. Moreover, States that still have Interstate withdrawal and substitution funds available to them can elect to deobligate those funds from a particular project and reobligate them to another eligible project. Any State interested in deobligating and reobligating Interstate withdrawal and substitution funds can contact its FHWA Division Office or FTA Regional Office to explore that possibility.

#### Rulemaking Analyses and Notices

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The issuance of this rule without prior notice and opportunity for public comment is based on the good cause exceptions in 5 U.S.C. 553 (b)(3)(B). Seeking public comment is unnecessary and contrary to the public interest. This action is merely a ministerial action to remove an obsolete part from the CFR and the removal of this part will have no substantive impact. Therefore, the agencies would not anticipate receiving meaningful comments on a proposal to eliminate 23 CFR part 476. Prior notice is therefore unnecessary, and it would be contrary to the public interest to delay unnecessarily this effort to eliminate an outdated rule. Furthermore, the FHWA and the FTA believe that because the underlying statutory authority for 23 CFR part 476 no longer exists, we are eliminating any confusion that may be caused from the existence of 23 CFR part 476.

The APA also allows agencies, upon a finding of good cause, to make a rule effective immediately upon publication (5 U.S.C. 553(d)(3)). For the same reasons discussed above, the agencies also believe good cause exists for making this action effective immediately upon publication.

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

The FHWA and the FTA have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. The obsolete provision in law to withdraw Interstate System segments under part 476 was eliminated on June 9, 1998, by TEA–21. Substitute projects are essentially all complete and related funding fully utilized.

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 agencies have evaluated the effects of this action on small entities and have determined that the action will not have a significant economic impact on a substantial number of small entities.

This rule eliminates an obsolete part of title 23 of the Code of Federal Regulation. This will simply eliminate any confusion that could be generated by retaining these obsolete regulatory provisions. For these reasons, the FHWA and the FTA certify that this action will not have a significant economic impact on a substantial number of small entities.

#### Unfunded Mandates Reform Act of 1995

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 will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This rule simply deletes an obsolete regulatory provision.

#### Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the agencies have determined that this action does not have sufficient federalism implications to warrant the preparation of a

<sup>2</sup> See final rule published on October 20, 1980, at 45 FR 69396.

<sup>3</sup> See section 1106(b) of TEA–21.