

should communicate with the Governor in the event that a conformity determination cannot be made. A couple of comments were received suggesting that "illustrative projects" should be able to complete the NEPA process before inclusion in a plan. Some comments were submitted on this section dealing with the issue of revenue estimation.

Section 1410.332 Selecting Projects From a TIP

No comments were received on this section.

Section 1410.334 Federal Certifications

The majority of comments, mostly from citizens and citizen groups, received on this section generally favored a more prescriptive approach to the involvement of the public during certification reviews. Their proposal included a requirement for a public hearing, sixty-day notice of when the review would be held, a forty-five day notice before the public meeting for the certification review, and the maintenance of a file of comments received by the MPO concerning its performance in the current and prior two years.

Several commenters raised concerns with the provisions of § 1410.334(a)(8) which directs that reviews be conducted consistent with all other applicable provisions of Federal law. They requested that such statutes be identified.

Conclusion

Given the diversity of comments and the disparity among them, the agencies have concluded that a workable compromise built upon the proposed planning rule is not identifiable at this time. Further, with the close proximity of the reauthorization of the surface transportation program, it is reasonable to wait for the outcome of the legislative process to see if any further changes are needed. We will review comments received on the SNPRM on the consultation with non-metropolitan local officials, published previously in the **Federal Register** and determine appropriate next steps on this matter. For these reasons, the FTA and the FHWA are withdrawing this rulemaking action except as it pertains to the consultation with non-metropolitan local officials.

Authority: 23 U.S.C. 134, 135 and 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5309; 49 CFR 1.48 and 1.51.

Issued on: September 12, 2002

Jennifer L. Dorn,

Federal Transit Administrator.

Mary E. Peters,

Federal Highway Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 771, 1420, and 1430

Federal Transit Administration

23 CFR Parts 1420 and 1430

49 CFR Parts 622 and 623

[FHWA Docket No. FHWA–99–5989]

FHWA RIN 2125-AE64; FTA RIN 2132-AA43

NEPA and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Withdrawal of proposed rulemaking and closing of public docket.

SUMMARY: This document withdraws a proposed rulemaking proceeding to update and revise our National Environmental Policy Act (NEPA) implementation regulation for projects funded or approved by the FHWA and the FTA. The agencies undertook this action to update and revise the NEPA and related procedures regulation which was last issued in 1987. The agencies intended to modify the regulation to reflect experience gained in administering these requirements and substantial changes in legislation that occurred during the time since 1987. The agencies have determined that the proposed changes generated such a diversity and disparity of comments that substantial further work is necessary to develop new proposals that accommodate these comments. However, with the close proximity of legislative reauthorization of the surface transportation program, the agencies believe that it would be prudent to wait for the outcome of the legislative process to see what further changes are needed. Accordingly, we are withdrawing the proposed rulemaking action and closing the docket.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Fred Skaer, (202) 366–

2058, Office of Planning and Environment, HEPE, or Mr. L. Harold Aikens, (202) 366–0791, Office of the Chief Counsel, HCC–40. For the FTA: Ms. Susan Borinsky (202) 366–8012, Office of Human and Natural Environment, TPL–30, or Mr. Scott Biehl, (202) 366–0952, Office of the Chief Counsel, TCC–30. Both agencies are located at 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 may access all comments received by the U.S. DOT Docket Facility, Room PL–401, by using the 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 by 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 reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's web site at: <http://www.access.gpo.gov>.

Background

A notice of proposed rulemaking (NPRM) published at 65 FR 33960 on May 25, 2000, with an extension of comment period published at 65 FR 41892 on July 7, 2000, proposed revising the current FHWA and FTA regulation on environmental impact and related procedures at 23 CFR part 771 by creating a new rule, NEPA and Related Procedures for Transportation Decisionmaking, 23 CFR part 1420, and by moving the regulations implementing Section 4(f) of the Department of Transportation Act of 1966, with minor revisions, to a new section entitled Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites, 23 CFR part 1430. The current rules implementing the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) for transportation projects using Federal funds or requiring Federal approval were last revised in 1987.

Since the regulation was last issued, the nature of highway and transit programs has evolved, reflecting a change in national transportation needs and our understanding of the influences that the transportation network can have on a complex set of environmental, community, and economic

considerations. Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 108; June 1998) called for a streamlined environmental review process that affects how the FHWA and the FTA carry out procedural responsibilities under NEPA. Therefore, in the NPRM, the FHWA and the FTA endeavored to clarify the role of the NEPA as an important tool for making transportation decisions and encouraged a more coordinated approach to transportation planning and project development as a means to more effective decisions regarding investment choices and trade-offs.

The environmental streamlining provision of the TEA-21, section 1309, clearly articulated Congress' intent that project delivery be improved with an environmental process that was more efficient, comprehensive, and streamlined, through negotiated time frames for concurrent reviews and national procedures for elevating disputes. The NPRM addressed streamlining by proposing a better managed NEPA process that included improved coordination, program and project flexibility, and overall process efficiency. It underscored the FHWA and FTA role as the lead Federal agency for transportation project review under NEPA and as facilitator of early involvement and participation of other Federal agencies in NEPA activities to identify and avoid redundant processes. In the NPRM negotiated project level timeframes were encouraged.

In response to section 1309 and Section 1308 (Major Investment Study Integration), of the TEA-21, the FHWA and the FTA promoted the integration of transportation decisionmaking in the NPRM, NEPA and Related Procedures for Transportation Decisionmaking, as well as in the NPRMs, Statewide Transportation Planning and Metropolitan Transportation Planning. The agencies published the NPRMs on statewide and metropolitan transportation planning on May 25, 2000, at 65 FR 33922. The FHWA and FTA observed that traditionally separate and distinct implementation requirements under NEPA and statewide and metropolitan planning created unintentional impediments to streamlining project delivery. Therefore, parallel concepts that proposed a fundamentally new approach to project development through integration and coordination of the transportation planning and NEPA decisionmaking processes were reflected in the NEPA and planning NPRMs. The concept encouraged a strong environmental policy and a collaborative problem

solving approach involving all levels of government and the public early in the process. The NPRM, NEPA and Related Procedures for Transportation Decisionmaking, focused on a streamlined environmental review process that supported protection and enhancement of communities and the natural environment.

The U.S. DOT agencies are responsible for complying with the requirements of 49 U.S.C. 303 and 23 U.S.C. 138, originally enacted as Section 4(f) of the Department of Transportation Act (Pub. L. 89-670, 80 Stat. 931 (1966)). Part 1430 of the NPRM, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites, proposed to redesignate the FHWA and FTA section 4(f) regulations (23 CFR 771.135) without substantive change. The FHWA and FTA declared their intent to address subsequent changes at a later date and specifically requested recommendations for changes that might be considered in future rulemaking.

Comments Received in Response to the NPRM

The agencies received 237 comments on the NPRM from transportation related and other organizations; State Departments of Transportation; private engineering and consulting firms; metropolitan planning organizations; advocacy and non-profit organizations; Federal agencies; State, regional and local governments, authorities and associations; tribal governments; and individual citizens.

Of these comments, 41 called for suspending the NPRM and 76 called for a comprehensive revision of the NPRM before proceeding. Another thirty-four commenters specifically suggested that the agencies include a major overhaul of the existing section 4(f) (23 CFR 771.135) regulations as part of this rulemaking. Major commenters included the American Association of State Highway and Transportation Officials (AASHTO), individual State DOTs (many of which supported or endorsed AASHTO's comments), the Association of Metropolitan Planning Organizations (AMPO), the American Public Transportation Association (APTA), the Environmental Defense Fund (EDF), the Surface Transportation Policy Project (STPP), the Coalition to Defend NEPA (CDN), the Natural Resources Defense Council (NRDC), the American Road and Transportation Builders Association (ARTBA), the Association of General Contractors (AGC), and the American Consulting Engineers Council (ACEC).

The most significant and controversial issues were identified in the following sections: Applicability (§ 1420.105); goals of the NEPA process (§ 1420.107); the NEPA umbrella (§ 1420.109); environmental justice (§ 1420.111); avoidance, minimization, mitigation, and enhancement responsibilities (§ 1420.113); the relationship of the planning and project development processes (§ 1420.201); environmental streamlining (§ 1420.203); categorical exclusions (§ 1420.311); and section 4(f) (§ 1430).

A number of commenters expressed concern about how and when the regulations would take effect and requested a reasonable transition period and/or a "grandfather" clause for projects that were already underway.

Section 1420.107 Goals of the NEPA Process

Some commenters were critical of the agencies' attempt to restate the philosophy and the basic intent of the policy underlying the NEPA by specifying seven distinct goals of the NEPA process, which included the following: environmental ethic, environmental justice, integrated decisionmaking; environmental streamlining; collaboration; transportation problem solving; and financial stewardship. Many of the commenters expressed concern over the statement that the U.S. DOT would manage the NEPA process to "maximize the attainment" of these goals. It was the opinion of some commenters that this section would permit a substantive, rather than procedural, interpretation of the NEPA process and could lead to additional litigation.

Section 1420.109 The NEPA Umbrella

Whereas the FHWA and FTA intended the discussion under this section to serve as a reminder of the full range of possible environmental considerations under NEPA, State DOTs, the AASHTO and some consulting firms expressed concern that the itemization of the NEPA "umbrella" considerations by the inclusion of a list of laws, regulations, and executive orders, could lead to a substantive rather than procedural, interpretation of the NEPA process and could pose an additional risk of litigation. However, there was general agreement of the basic NEPA umbrella concept and approach. Some Federal agencies and individual citizens provided suggestions for other considerations that they believe should be added to the list.

Section 1420.111 Environmental Justice

The inclusion of environmental justice analysis requirements in the NEPA regulation was a provision of the NPRM that received the most comments. A major concern stated by some State DOTs and others was that the regulation confused and "intermingled" the separate considerations and requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) and the provisions of the Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. While it was recognized that these were important considerations, it was suggested that they be treated separately. Several State DOTs expressed their opinions that the statement of environmental justice objectives as an integral part of the NEPA process was inappropriate. They were concerned that this would add the additional burden for data analysis and the necessity to reach a conclusion on disproportionate impacts.

Some commenters expressed the concern that the inclusion of environmental justice requirements within the NEPA regulations would pose a greater risk of litigation and suggested replacing the entire section with a non-discrimination commitment. Advocacy and some special interest groups expressed their support of the environmental justice provisions that essentially served to clarify the project-level considerations required to meet Title VI provisions during the NEPA process.

Section 1420.113 Avoidance, Minimization, Mitigation, and Enhancement

Most of the comments received on this section from State DOTs and the AASHTO expressed the opinion that environmental "enhancements" should be optional and at the discretion of the State applicant to consider or implement. They believed that this language should be removed from the proposed regulation. Some individual citizens called for the U.S. DOT to do more to assure that the health effects of road expansions are accounted for, mitigated, and avoided during the NEPA process. They encouraged the strengthening of provisions regarding the dismissal of alternatives that would reduce health risks.

Section 1420.113 Relationship of Planning and Project Development Process

Most commenters supported the elimination of duplicative paperwork and the linkage of transportation planning and the NEPA processes but expressed doubts whether the regulations, as proposed, would actually accomplish these goals, especially if the NEPA process was not formally bound by planning-level decisions. It was generally recognized that the planning and NEPA linkage provisions of this section were an attempt to integrate the major investment study (MIS) objectives into the planning and NEPA processes as required by the TEA–21, section 1308. However, concern was expressed that the mechanisms employed would have the effect of extending MIS-type requirements to a larger community of projects, thus increasing the paperwork burden without eliminating duplicative processes in planning and the NEPA project development process.

Section 1420.203 Environmental Streamlining

A common sentiment, especially of the AASHTO and the State DOTs, was that the NPRM failed to streamline the environmental process.

Several commenters viewed the proposed NPRM as a missed opportunity to address the intent of the TEA–21 and actually represented an increased burden of paperwork, process requirements, and potential additional litigation.

Many comments noted a lack of specific provisions addressing timeframes, comment deadlines, dispute resolution, and "closing the record" on decisionmaking at an appropriate stage.

The NPRM was criticized for addressing large and small projects in very much the same way and, in terms of requirements, many commenters thought the proposed changes would result in the delay of some routine minor actions processed with environmental assessments or categorical exclusions.

The proposed coordinated review procedures were criticized for being too complex and time consuming. Some commenters suggested that we should seek the comments of other Federal and State agencies, rather than their "concurrence" on project decisions.

Section 1420.311 Categorical Exclusions (CEs)

Some commenters were concerned over the scope and number of the categorical exclusions (CEs), while others thought the list was not exhaustive or inclusive enough.

Some commenters requested that the rule provide clarification of the fact that CEs were subject to environmental mandates and evaluation, while others requested the removal of any documentation requirements that would slow down the CE determination process.

Although not a part of the CE section, it was suggested that the provisions of § 1420.105(b) that proposed to establish the set of criteria for transportation alternatives (logical termini, independent utility, and restriction on the consideration of alternatives for other reasonably foreseeable transportation activities) were inappropriate for CE actions and would have the effect of requiring an alternatives analysis for a CE action, where it was previously not required.

Part 1430, Section 4(f) Provision

Thirty-four of the fifty-seven comments complained about the lack of substantive revision of 23 CFR 771.135 and requested a comprehensive overhaul of the section 4(f) regulations in this NPRM. There was a general sentiment regarding section 4(f) that a major reform was necessary to reduce the risk of litigation, reduce paperwork and cost, and increase the time it takes to deliver projects where section 4(f) is an issue.

Determination

We considered the comments to the docket and determined that we were unable to develop a satisfactory final rule based on the proposed rule that would respond to the diversity and disparity of comments received. We also determined that issuing a supplemental notice of proposed rulemaking would not be reasonable, given the close proximity of legislation to reauthorize the surface transportation program and the likelihood that this legislation would necessitate further regulatory changes. Instead of rulemaking at this time, we propose to continue implementing statutory responsibilities not reflected in the existing regulation through a combination of non-regulatory guidance and sharing of best practices. The existing regulation (23 CFR part 771) remains in effect. We will revisit the issue of whether rulemaking to change the existing regulation is necessary or appropriate following the reauthorization of the surface transportation program.

Conclusion

For the reasons stated above, the agencies are terminating this proposed rulemaking and closing the docket.

Authority: 23 U.S.C. 109, 128, 134, 138, and 315; 42 U.S.C. 2000d–2000d–4, 4321 *et seq.*, and 7401 *et seq.*; 49 U.S.C. 303, 5301(e), 5303, 5309, and 5324(b) and (c); 49 CFR 1.48 and 1.51; 33 CFR 115.60(b); 40 CFR parts 1500–1508, Sections 1308 and 1309 of TEA–21 (Public Law 105–178, 112 Stat. 108 at 231–234).

Issued on: September 12, 2002.

Jennifer L. Dorn,

Federal Transit Administrator.

Mary E. Peters,

Federal Highway Administrator.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–107]

RIN 2115–AA97

Safety Zone; Aggregate Industries Fireworks—Boston Harbor—Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the Aggregate Industries Fireworks display on October 24, 2002, in Boston, MA. The safety zone would temporarily close all waters of the Boston Harbor within a four hundred (400) yard radius of the launch platform located in approximate position 42°21'73" N, 071°02'73" W. The safety zone would prohibit entry into or movement within this portion of the Boston Harbor during the fireworks display.

DATES: Comments and related material must reach the Coast Guard on or before October 10, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

This NPRM comment period will be less than 30 days due to the short notice received for this event. There was not sufficient time for a longer comment period, but we wanted to provide the public with the opportunity to comment on the proposed regulation. For the same reasons, we anticipate making the final rule effective less than 30 days after publication in the **Federal Register**.

Request for Information

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–107), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

This regulation proposes to establish a safety zone within a 400-yard radius of the fireworks barge located at position 42°21'73" N, 071°02'73" W. The safety zone would be in effect from 8 p.m. until 11 p.m. on Thursday, October 24, 2002.

The zone would restrict movement within this portion of the Boston Harbor for the fireworks display and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside of the safety zone during the effective periods. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via safety marine information broadcasts and local notice to mariners.

Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of the Boston Harbor during the effective period, the effects of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, vessels may safely transit outside of the safety zone, and advance notifications will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Boston Harbor between 8 p.m. and 11 p.m. on October 24, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic can safely pass outside of the safety zone during the effective period, the safety zone is limited in duration, and advance notifications which will be made to the local maritime community by safety marine information broadcasts and local notice to mariners.

If you think that your business, organization, or governmental