

action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Turbomeca S.A: Docket No. 2001-NE-06-AD.

Applicability

This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S, 1 S1 and Arriel 2 B, 2 B1, 2 C, 2 C1, 2 S1 series turboshaft engines. These engines are installed on, but not limited to, Eurocopter France AS350B1, AS350B2, AS350B3; Astar 350D, Fennic AD550U2 and Sikorsky S-76A and S-76C series helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required within 30 days after the effective date of this AD, unless already done.

To prevent acoustic excitation of the centrifugal compressor impeller blades, resulting in contained blade ruptures and power loss that could lead to an uncommanded in-flight shutdown, do the following:

Modification TU 300 Not Incorporated

(a) For Arriel 1 D, 1 D1, 1 S, and 1 S1 engines that do not have TU 300 incorporated, incorporate TU 300 and TU 316A as follows:

(1) Remove the bleed valve in accordance with the Instructions to be Incorporated of Turbomeca mandatory service bulletin (MSB) 292 72 0261, dated September 20, 1999.

(2) Install sleeve part number (P/N) 0 292 15 333 0 and the bleed valve in accordance with 2.B.(1)(d) through 2.B.(1)(g) of the Instructions to be Incorporated of Turbomeca MSB 292 72 0275, Update No. 1, dated October 2, 2001.

Modification TU 300 Incorporated

(b) For Arriel 1 A2, 1 C, 1 C1, 1 C2, 1 D, 1 D1, 1 E2, 1 K, 1 K1, 1 S and 1 S1 engines that have modification TU 300 incorporated, incorporate modification TU 316A in accordance with 2.B.(1)(a) through 2.B.(1)(g) or 2.B.(2) of the Instructions to be Incorporated of Turbomeca. MSB 292 72 0275, Update 1, dated October 2, 2001.

Modification TU 54 Not Incorporated

(c) For Arriel 2 B and 2 S1 engines that do not have modification TU 54 incorporated, incorporate TU 54 and TU 70A as follows:

(1) Remove the bleed valve in accordance with the Instructions to be Incorporated of Turbomeca MSB 292 72 2054, dated September 20, 1999.

(2) Install sleeve P/N 0 292 15 333 0 and the bleed valve in accordance with the 2.B.(1)(d) through 2.B.(1)(g) or 2.B.(2) of the Instructions to be Incorporated of Turbomeca MSB 292 72 2070, Update 1, dated October 5, 2001.

Modification TU 54 Incorporated

(d) For Arriel 2 B, 2 B1, 2 C, 2 C1 and 2 S1 engines that have modification TU 54 incorporated, incorporate modification TU 70A in accordance with 2.B.(1)(a) through 2.B.(1)(g) or 2.B.(2) of the Instructions to be Incorporated of Turbomeca MSB 292 72 2070, Update 1, dated October 5, 2001.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (DGAC) Airworthiness Directives No. 2002-126(A) and 2002-27(A), dated March 6, 2002

that replaced DGAC AD's 1999-391(A) and 1999-392(A), dated October 6, 1999.

Issued in Burlington, Massachusetts, on September 12, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02-23881 Filed 9-19-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 1410

Federal Transit Administration

23 CFR Part 1410

49 CFR Parts 613 and 621

[FHWA Docket No. FHWA-99-5933]

RIN 2125-AE62; FTA RIN 2132-AA66

Statewide Transportation Planning; Metropolitan Transportation Planning

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

ACTION: Partial withdrawal of notice of proposed rulemaking (NPRM).

SUMMARY: This document partially withdraws the proposed rulemaking in which the agencies proposed to amend its requirements on statewide and metropolitan planning (65 FR 33922, May 25, 2000; comment period ended at 65 FR 41891, July 7, 2000). This partial withdrawal is based on the level of critical comment received, the development of alternative means for implementing the topics addressed in the NPRM and the pendency of reauthorization of the surface transportation program. The agencies are withdrawing this rulemaking except for those sections that relate to "consultation with non-metropolitan local officials" which are addressed in the SNPRM published on June 19, 2002, at 67 FR 41648.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Sheldon M. Edner, Metropolitan Planning and Policies Team (HEPM), (202) 366-4066 (metropolitan planning), Mr. Dee Spann, Statewide Planning Team (HEPS), (202) 366-4086 (statewide planning), or Mr. Reid Alsop, Office of the Chief Counsel (HCC-31), (202) 366-1371. For the FTA: Mr. Charles Goodman, Metropolitan Planning Division (TPL-12) (metropolitan planning), (202) 366-1944, Mr. Paul Verchinski, Statewide Planning Division (TPL-11) (statewide

planning), (202) 366-1626, or Mr. Scott Biehl, Office of the Chief Counsel (TCC-30), (202) 366-0952. Both agencies are located at 400 Seventh Street, SW., Washington, D.C. 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Internet users may 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 reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background

Sections 1203, 1204, and 1308 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, amended 23 U.S.C. 134 and 135, which require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. Similar changes were made by sections 3004, 3005, and 3006 of the TEA-21 to 49 U.S.C. 5303-5306 which address the metropolitan planning process in the context of the FTA's responsibilities. In addition section 5206(e) of the TEA-21 directed that all intelligent transportation system (ITS) improvements funded with highway trust fund monies (including those from the mass transit account) be consistent with the national ITS architecture.

The FHWA and the FTA published a notice of proposed rulemaking on May 25, 2000 (65 FR 33922); that detailed proposed revisions to the existing planning regulations 23 CFR part 450. Comments were solicited by August 23, 2000 (later extended to September 23, 2000; July 7, 2000 65 FR 41891). We are also terminating a related rulemaking dealing with revisions to regulations regarding the implementation of the National Environmental Policy Act (NEPA) for projects funded or approved by the FHWA or the FTA, which was proposed simultaneously with the planning NPRM in a separate document, published elsewhere in today's **Federal Register**.

A companion NPRM for the Intelligent Transportation System Architecture (ITS) and Standards, 23 CFR parts 655 and 940 was published on May 25, 2000, at 65 FR 33994. A final rule was published on January 8, 2001, at 66 FR 1446. Efforts were made to coordinate development of the ITS and planning rules, specifically with regard to the requirement for an "ITS integration strategy" as proposed in 23 CFR 1410.322(b)(11) of the planning NPRM.

The comments discussed below indicated a substantial diversity of opinion from a wide variety of interests, including environmental groups, transit organizations, the State Departments of Transportation, and metropolitan planning organizations. In the Fall of 2000, a series of congressional hearings raised additional issues that we have reviewed. Based on the comments received, the time elapsed since publication and the close proximity of reauthorization of the surface transportation program we have decided to partially withdraw the proposed rules and rely in the interim on both existing regulatory and TEA-21 statutory requirements (e.g. Federal certifications of Transportation Management Areas, Metropolitan/State Federal Planning Findings, etc.) as well as non-regulatory approaches to implement the TEA-21 planning provisions, such as reinforcing compliance through workshops, pilot activities, case studies, information sharing and selective enforcement of compliance with existing FHWA and FTA regulations and enforcement tools on a case-by-case basis. However, we are not withdrawing the portions of the May 2000 planning NPRM as they pertain to consultation with non-metropolitan local officials. We are addressing that issue in a separate SNPRM published previously in the **Federal Register**.

The Statewide Metropolitan Planning regulation at 23 CFR 450, continues in force except as modified by Transportation Equity Act for the 21st Century (TEA-21) (Public Law 105-178, 112 Stat. 107, June 1998).¹

Discussion of Comments on the NPRM

After reviewing the comments submitted in response to the NPRM, the FHWA and the FTA have decided to partially withdraw our rulemaking on this issue. As indicated earlier the extent of controversy, the divergence of opinion and the close proximity of reauthorization all suggest withdrawal

of the proposed rules except the section that addresses consultation with non-metropolitan local officials. We will reconsider the possibility of issuing regulations after reauthorization of the surface transportation program. During the comment period on the proposed rules, the FTA and the FHWA held seven public meetings to present information on the NPRM. Comments were not solicited at those meetings. Attendees were encouraged to submit all comments to the docket. However, a summary of questions raised at the meetings and the general responses of the FHWA and the FTA presenters is included in the docket.

In addition the FTA and the FHWA responded to requests for presentations at several meetings during the comment period of the NPRMs. The agencies made the following presentations: Texas Planning Conference, Alaska (arranged teleconference), Michigan, Florida, and the Association of Metropolitan Planning Organizations policy conference. A summary of all comments by section of the NPRM has been prepared by the FHWA and the FTA and inserted in the docket. We have carefully reviewed all comments.

During the comment period (on September 12 and 13, 2000), the Senate Environment and Public Works and the House Transportation and Infrastructure Committees held hearings regarding the NPRMs. The FHWA and the FTA have reviewed the comments and questions raised at the hearings.

Summary of Comments Received

There were approximately 425 documents (representing just over 300 discrete comments when form letters from multiple groups and individuals are accounted for) submitted to the docket for the planning NPRM. The comments were distributed among types of organizations as indicated below. We received diverse and, even, opposing comments. General comments concerning the rule are addressed initially, followed by specific responses to individual sections of the regulatory proposals. We received comments from the following:

Interest groups and associations—69
Businesses—2
Congressional—1
Federal agencies—7
Local governments—34
Metropolitan Planning Organizations—70
Private individuals—14
Regional Councils—44
State DOTs—52
Other State agencies—17
Transit agency—16
Tribes and tribal organizations—11

¹ For guidance on implementing the provisions of the TEA-21 please see the memorandum, dated February 2, 2001, entitled "Implementing TEA-21 Planning Provisions" available at the following URL: <http://www.fhwa.dot.gov/hep/tea21mem.htm>.

Distribution Table

The NPRM proposed renumbering of 23 CFR part 450 as 23 CFR part 1410 and amending Chapter VI of Title 49 CFR by removing part 613 and adding part 621. We did not receive any comments on this proposal.

Section-by-Section Discussion of the Comments

The discussion in this section presents comments received on specific sections.

Section 1410.100 Purpose

No comments were received on this section.

Section 1410.102 Applicability

We did not receive any comments on this section.

Section 1410.104 Definitions

We received a comment from a State DOT that the regulations should define 'transportation control measures (TCM)' to include only those projects included in the State implementation plan (SIP). It was our intent in the NPRM that TCMs be defined to include only those measures that are specifically identified and committed to in the applicable SIP. The definition used in the NPRM was taken from the transportation conformity rule for consistency.

A State DOT suggested that "systematic process" be dropped from the definition of "congestion management system (CMS)."

More than twenty discrete comments were received on the proposed definition of "consultation;" opposed and supportive. Representatives of Indian Tribal Governments proposed revised wording to address the issue concerning consultation with Indian Tribal Governments. Numerous comments were received suggesting minor revisions to our proposed definition of "coordination."

Definitions for "design concept," "design scope," "federally funded non-emergency transportation services," "financial estimate," and "freight shipper" were included in the NPRM. One commenter observed that the definition of design concept was too restrictive for attainment areas and proposed modification. A suggestion to define financial estimates in precise detail was offered.

One commenter suggested revising the term "Governor" by adding "or designee" in the definition. A proposal to clarify "ITS Integration Strategy" was offered by the Intelligent Transportation Society of Maryland. A similar proposal was made by a State DOT for "illustrative projects."

Several commenters, primarily State DOTs and MPOs, observed that the terminology "interim plan and TIP" was either not necessary or confusing.

One commenter offered the idea that the definition of MPO needed emphasis on the policy body as the MPO. Approximately five commenters suggested that the term "most recent assumptions" be tied to a statutory definition or left to the MPO to determine. A few comments were offered to modify the term "provider of transportation freight services."

Several commenters raised questions concerning the prohibition against extensions in nonattainment areas and limitation in attainment areas.

The TEA-21 Negotiated Rulemaking Committee—Tribal Caucus suggested that the definition should allow a tribal government to request designation as a transportation management area (TMA).

A suggestion to modify the point at which the twenty-year period commenced was offered by a commenter. A proposal to drop the terminology "or special census as appropriate" from the definition of urbanized area was offered.

Proposals from State DOTs and MPOs were offered to define the terms "comprehensive update," "project phase," "planning process participants," and "conformity freeze."

The environmental justice elements of the NPRM generated a great deal of comment. One common thread in these comments was the suggestion that key terms be defined.

Subpart B—Statewide Transportation Planning and Programming

Section 1410.200 Purpose

One State DOT observed that this section should emphasize "general strategies" to serve operations and management since the statewide plan can be a policy plan. Another commenter observed that this section should reference "multimodal," as well as "intermodal."

Section 1410.202 Applicability

One commenter asked that this section acknowledge the possibility of other agencies being designated by the Governor as participants in the planning process.

Section 1410.204 Definitions

No comments were received on this section.

Section 1410.206 Statewide Transportation Planning Process Basic Requirements

We received over fifty comments from advocacy groups, professional groups,

State DOTs, State agencies and MPOs on this section. The comments were split between two clear poles: a general perception that the NPRM did not go far enough to demonstrate how MPOs and State DOTs can achieve environmental justice goals and a line of reasoning that suggests that the proposed requirements were too detailed and burdensome. In the latter instance, a companion argument was offered frequently that the NPRM confused the principles of environmental justice with the principles of Title VI of the Civil Rights Act (42 U.S.C. 2000d-1).

Section 1410.208 Consideration of Statewide Transportation Planning Factors

Three general themes emerged from the comments submitted on this section: (1) Guidance on the compliance with the seven planning factors should be minimal and tied to best practices and good examples; (2) the term "planning process participants" was too vague; and (3) proposed section 1410.208(b) was unnecessary.

Section 1410.210 Coordination of Planning Process Activities

We received several comments from local government officials, State DOTs, and advocacy groups regarding this section, generally seeking to modify key relationships or add entities for coordination. One commenter suggested that we change coordination to "consultation" or "communication" where other States or countries are involved. Another commenter suggested adding Indian Tribal Governments to the entities involved in coordination and several commenters proposed more specificity of coordination procedures for clarity.

We also received comments requesting clarification of the proposed rule as to the application of transportation conformity to the statewide transportation planning process.

Section 1410.212 Participation by Interested Parties

We received over 150 comments from State DOTs, local governments, advocacy organizations and others on this section. The bulk of them focused on the issue of consultation with non-metropolitan local officials. We have addressed this issue in a separate SNPRM published previously in the **Federal Register** as noted above.

One tribal government suggested that we use negotiated rulemaking procedures for tribal governments in the completion of the rulemaking process.

Section 1410.214 Content and Development of Statewide Transportation Plan

Two new sections were proposed to reflect legislative changes: ITS and optional financial plan. Approximately twenty-five comments from State DOTs, MPOs and professional associations were submitted on the ITS architecture proposal. The comments on the ITS provisions were generally split between supporting the proposal and opposing it based on a perceived additional burden. Some commenters felt that the strategy of main streaming ITS investments in this fashion and dealing with them as part of the planning process would not permit technology to be implemented in a timely fashion. Some DOTs observed that the burden of getting agreements signed with all implementers was too great.

Comments on the financial plan provisions of this section were generally focused on understanding how this plan related to the financial plan required of MPOs. The commenters were looking for clarification of intent and requirement.

Section 1410.216 Content and Development of Statewide Transportation Improvement Program (STIP)

Three general comments were raised regarding the requirement for financial estimates to support the MPO plan and TIP development. State DOTs questioned the inclusion of the transit operator as a party to the estimate development as being beyond statutory requirement. At least two commenters questioned what the time frame should be for developing estimates. Finally, one commenter questioned the extended authority given to the State to develop the estimates.

One commenter suggested that the provisions of § 1410.216(b) be revised to require participation by agencies based on ownership or degree of environmental impact. It was suggested also that this involvement be extended to environmental restoration or enhancement projects. Three general threads of commentary were offered on § 1410.216(c). State DOTs and some MPOs questioned the identification of ITS projects on several grounds, most notably the burden of clearly identifying them. The general need for this section was also questioned. Finally, several commenters wanted clarification of the term "project phase."

Several comments were raised regarding the level of detailed information required for a TIP, especially with regard to categories of

funding sources for projects. A significant battery of comments was offered regarding the role of Indian Tribal Governments in the STIP development process. One Indian tribe suggested the idea that Tribal Governments should be included with those agencies regularly informed regarding the STIP development process.

A Tribal Government representative suggested that Indian Tribal Governments should be included in those cooperating agencies that must be consulted in STIP modification procedures.

Section 1410.218

This section addressed revisions made as a result of the replacement of the Major Investment Study requirement. The discussion of comments received is found under section 1410.318 below.

Section 1410.220 Funding of Planning Process

A tribal government suggested that tribal governments should be identified among the participants eligible to receive funds.

Section 1410.222 Approvals, Self-Certification and Findings

Three general areas of comment for this section appear in the docket: (1) The FHWA and the FTA should be able to approve TIP/STIP extensions; (2) tribal governments should be afforded an expanded role in TIP/STIP development; and (3) the environmental justice provisions should be more explicitly spelled out. Many State DOTs and MPOs requested that STIP/TIP extensions be allowed in nonattainment and maintenance areas.

Section 1410.224 Project Selection

One set of commenters requested the addition of tribal governments to those with selection authority. One commenter questioned whether the language of this section permits the unrestricted movement of projects across all three years of a STIP. Finally, a commenter felt that this section continues to remain unclear.

Section 1410.226 Applicability of NEPA to Transportation Planning and Programming

We did not receive any comments on this section.

Subpart C—Metropolitan Transportation Planning and Programming

Section 1410.300 Purpose of Planning Process

One commenter suggested that this section should recognize that one purpose of the metropolitan planning process is to plan transportation systems that will minimize transportation related fuel consumption and air pollution.

Section 1410.302 Organizations and Processes Affected by Planning Requirements

One commenter suggested that the preamble does not explain why the reference to project selection was proposed to be dropped from the regulation since this is the link between programming and the actual receipt of Federal funds.

Another commenter wanted us to add the following language: "the provisions of this subpart are applicable to agencies responsible for satisfying the requirements of the transportation planning, programming and project development processes in metropolitan areas pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303–6."

Section 1410.304 Definitions

We did not receive any comments on this section.

Section 1410.306 What Is a Metropolitan Planning Organization and How Is It Created?

Comments on this section tended to focus on MPO policy board membership issues regarding representation (elected officials and operators of major modes of transportation) and opposing or favoring the proposed changes regarding multiple MPOs in a single metropolitan area. Several MPOs offered the idea that MPO policy board membership should favor elected officials. These individuals also tended to oppose providing representation for operators of major modes of transportation.

The MPO commenters addressing the matter of multiple MPOs tended to support the NPRM proposal that would reduce the possibility of such designations.

Section 1410.308 Establishing the Geographic Boundaries for Metropolitan Transportation Planning Areas

Only one comment was made on this section and it favored the language as proposed.

Section 1410.310 Agreements Among Organizations Involved in the Planning Process

The comments received on this section tended to focus on the addition of the ITS agreement to the list of agreements already contained in this section. The concerns ranged from the necessity of adding an agreement to the need for additional guidance on what should be addressed in the agreement. Some commenters, typically professional association and ITS oriented groups, supported the provision, others (often MPOs and State DOTs) objected to it. Some comments questioned whether an MPO would have the staff to conduct needed work. Bringing the operating agencies to the planning process was raised also as a concern, largely in terms of the potential to add to the burden of coordination and slow down the planning process.

Several commenters addressed the proposed provisions regarding an agreement on ITS policy and operational issues. One commenter felt that the agreement strategy was unrealistic and potentially destructive in terms of promoting ITS. The comments provided suggested that the U.S. DOT take a leadership role in promoting approaches to main streaming ITS, rather than relying on individual localized approaches.

Section 1410.312 Planning Process Organizational Relationships

One commenter suggested that the records of agreements should be made available to the public. Another comment observed that the transit agency should not be on equal footing with MPOs and State DOTs in concluding agreements.

Section 1410.314 Planning Tasks and Unified Work Program

We received less than ten comments on this section. One commenter suggested that the unified planning work program (UPWP) should be more of a policy document. Another letter suggested that the States should be held to the same standard as MPOs. Finally, another commenter said that the requirement for consultation with the U.S. Environmental Protection Agency (EPA) in nonattainment areas is inappropriate and will lead to time delays.

Section 1410.316 Transportation Planning Process and Plan Development

The environmental justice aspect of this section received the bulk of comments. Over fifty separate commenters submitted suggestions for change. Few, if any, commenters were

content with the proposed wording as published. The majority of comments, typically from MPOs, and State DOTs, tended to suggest that the proposal was burdensome, unclear, insufficient, potentially subject to unending litigation, and confusing in terms of the relationship between Title VI and environmental justice.

A second area of major comment was the public involvement provision. Generally, there was support for these provisions. Some suggestions, from interest groups and citizens, were offered for greater precision in requirements, most notably regarding documentation of response to comments, definitions of key groups afforded opportunity to participate, and evaluation of processes.

The planning factor provisions attracted a few comments. A couple of comments supported the development of performance standards for addressing the factors. One letter asked that we identify the rationale for the planning process to identify strategies for complying with the Americans with Disabilities Act (ADA)(42 U.S.C. Chapter 126). Another letter recommended a two year phase-in for consultation with Indian tribal governments. Finally, a comment from an MPO wanted to know if TIP amendments are adopted that trigger a reference to existing plans, even though less than twenty years remains on its horizon, the plan should be acceptable as a basis for Federal action.

Section 1410.318 Relation of Planning and Project Development Processes

State DOTs, MPOs, environmental groups and transit agencies submitted comments on this section, generally reflecting diverse policy perspectives in favor or against the proposals. The clear intent of section 1308 of the TEA-21 was to direct the Secretary to eliminate and propose an alternative to the separate major investment study (MIS) requirement. The technical structure of the law is such that this action requires a two step process: (1) Eliminating and (2) proposing an approach for integrating what remains. In withdrawing portions of the NPRM, the FHWA and the FTA cannot complete both steps. Hence, the agencies see the current regulatory language as a place holder that can be utilized at the discretion of State and local agencies as they see the need until future action on a rule. Implementation of the provisions of this section by the FTA and the FHWA will be appropriately flexible.

Section 1410.320 Congestion Management System and Planning Process

The FHWA and the FTA received no adverse comment on this provision as discussed in the NPRM. A couple of commenters supported the change.

Section 1410.322 Transportation Plan Content

We received a significant number of comments on this section. Topics most frequently addressed were the twenty year planning horizon for plans, most recent planning assumptions, how to address operations and management, the treatment of illustrative projects, the ITS integration strategy, interim plans and TIPs, and point of conformity determination. Each of these topics provoked a variety of comments.

The twenty year planning horizon was both praised and criticized. The NPRM sought to provide clarification for a conundrum identified in the course of implementing the 1993 regulation. The TIPs must be updated on a two year cycle; plans on three and five year cycles.

A number of comments were received on various air quality related issues. One concern, voiced by State DOTs and MPOs, was the effective date of the plan, which was tied by the rule to the date of the Federal air quality conformity determination. Another set of observations questioned the need for utilizing latest planning assumptions. One commenter raised concerns about maintaining air quality rather than just achieving the air quality budget. Some commenters raised questions concerning air quality issues beyond the time frame for the SIP and finally, one commenter raised a concern regarding air toxics and fine particulate matter.

One comment requested that the EPA, the FHWA, and the FTA be required to adhere to a reasonable time frame for conformity review and determination. The April 19, 2000, National Memorandum of Understanding (MOU) between the U.S. DOT and the U.S. EPA² makes provisions for more efficient and timely review of conformity decisions, including the establishment of time frames for field office review, as well as a 30-day dispute resolution process.

Some comments were received on the mismatch of the transportation planning and air quality planning horizons.

² The memorandum, entitled "National Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U. S. Department of Transportation," dated April 19, 2000, is available at the following URL: <http://www.fhwa.dot.gov/environment/cnfmou.htm>.

Two comments were received stating that there was no statutory basis for requiring the use of the most recent planning assumptions. There is a statutory basis for requiring the use of the most recent planning assumptions in the Clean Air Act (CAA) (42 U.S.C. 7506) which requires that the determination of conformity be based on the most recent estimates of emissions, and that such estimates be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

One commenter stated that in § 1410.322(b)(10) the last sentence should be revised to read “* * * implementation of projects and programs to reach or maintain air quality compliance.”

Two comments were received regarding the role of the MPO in the air quality planning process. We received one comment requesting that the rules address health risks from air toxics and fine particulate matter.

One final air quality conformity issue of significance was the need for an interim plan. Many comments were received questioning the need for an interim planning process during a conformity lapse or requesting more flexibility in the process.

One comment requested that the rule allow new submitted, but not yet approved by the U.S. EPA, TCMs to proceed during a conformity lapse. The April 19, 2000, National Memorandum of Understanding between the U.S. DOT and the U.S. EPA details how new TCMs should advance during a conformity lapse. New TCMs must have identified emission reduction benefits, be included in an interim plan/TIP and the U.S. EPA approved SIP, and meet the definition of a TCM in order to advance during a conformity lapse.

Several commenters, MPOs and State DOTs, solicited additional clarification on how management and operations would be treated during the planning process.

The term “illustrative project” and its usage in the NPRM attracted considerable attention and comment. Most commenters wanted additional clarification of the term and how illustrative projects would be treated in a plan and TIP. The cooperative development of estimates of various funds to support plan and TIP development received several significant comments. Many writers wanted substantial additional guidance on how such estimates should be developed and the reconciliation of

potential conflicts between the participating entities. One principal concern of some commenters was the fear that a single entity might be able to hold all other planning participants hostage over the development of these estimates.

The ITS integration strategy proposal attracted significant comment both in character and number. The concerns raised were varied. Some commenters wanted greater clarification and detail in the regulatory requirements. Others, often MPOs and State DOTs, thought they were too restrictive and burdensome. There was some concern about how the ITS architecture provision would relate to operations and management. A couple of commenters, associations and groups, expressed the desire to have the regulations identify the lead agency and many wanted additional funding to support the development of the ITS integration strategy. A common concern, expressed by DOTs and MPOs, was the need for a longer phase-in period for the requirement.

The need to identify ITS investments in TIPs and plans was questioned by ITS groups and interests.

Section 1410.324 Transportation Improvement Program Content

This section received the largest number of comments. The bulk of these comments focused on the exemption of 23 U.S.C. 402, Safety and Motor Carrier Safety Assistance Programs, from inclusion in the TIP, financial forecasts, air quality issues and the annual listing of projects. These comments typically came from law enforcement officials and safety groups.

The planning NPRM proposed to eliminate the exclusion for Section 402 Safety and Motor Carrier Safety Assistance Program (administered by the Federal Motor Carrier Safety Administration) grants from listing in the TIP/STIP. The rationale was that these funds could be used to fund ITS projects and such projects would need to be in TIPs/STIPs for the purposes of the ITS architecture consistency requirements. Numerous safety organizations observed that the bulk of the projects funded by these programs have nothing to do with ITS.

Some MPOs and State DOTs suggested that extensions be permitted for TIPs in both attainment and nontainment areas.

A number of comments were received that requested more flexibility in the application of transportation conformity to TIP amendments. In accordance with the transportation conformity rule (40 CFR 93.104), a conformity

determination must be made for a TIP amendment and/or a plan revision.

The provisions governing the financial forecasting requirements of the TEA-21 received numerous comments. Perspectives ranged from a request for far more detail in the process specified to far less. Concerns were raised about guarantees that estimated funds would be available and that the reliance on a process specification was inconsistent with the statute. Several commenters wanted the procedures and estimates governed by some form of documentation, *i.e.*, an MOU, specification in plan documents or some other means. Requests were made for additional guidance and some questions were raised as to why transit operators were accorded equal footing with MPOs and States.

The annual listing of projects provisions was the most heavily commented upon in this section. Again, the comments were diverse, split along the lines of whether additional specification of detail was needed. Most States and MPOs believed that the requirement was not easily implemented based on the lack of a centralized data base from which obligations could be identified. Many observed that the Federal agencies could obtain that information from the FHWA Fiscal Management Information System (FMIS). A large number of non-governmental organizations and citizen advocacy groups supported a very detailed and standardized data collection protocol that in their view would allow citizens greater access to information, more complete understanding of what was funded and the ability to do useful comparisons on a national basis. They also argued that their model would permit more effective documentation of compliance with environmental justice requirements.

Section 1410.326 Transportation Improvement Program Modification

Several comments were received regarding the need for a new conformity determination when a project is moved between the first three years of a TIP, or moved from year four or greater to the first three years.

Section 1410.328 Metropolitan Transportation Improvement Program Relationship to Statewide TIP

No comments were received on this section.

Section 1410.330 Transportation Improvement Program Action by FHWA/FTA

One comment was received requesting clarification as to who

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.

[FR Doc. 02–23699 Filed 9–19–02; 8:45 pm]

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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