

is a formal rulemaking “on the record after opportunity for a hearing.” Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The Deputy Administrator certifies that this proposed rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget. Buprenorphine is already controlled under the CSA. Individuals who are currently engaged in activities with buprenorphine are already registered to handle controlled substances and are subject to the regulatory requirements of the CSA.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This proposed rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of

any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-

based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (21 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.13 is amended by revising paragraph (e) to read as follows:

§ 1308.13 Schedule III.
* * * * *

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule:

- (1) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
- (i) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium 9803
 - (ii) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9804
 - (iii) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium 9805
 - (iv) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts 9806
 - (v) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts 9807
 - (vi) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9808
 - (vii) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9809
 - (viii) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9810
- (2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:
- (i) Buprenorphine 9064

(ii) [Reserved.]
* * * * *
3. Section 1308.15(b) is revised to read as follows:
§ 1308.15 Schedule V.
* * * * *

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) [Reserved]
* * * * *
Dated: October 1, 2002.
John B. Brown, III,
Deputy Administrator.
[FR Doc. 02–25293 Filed 10–4–02; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
23 CFR Part 450
[FHWA Docket No. FHWA–2001–10886]
RIN 2125–AE92
Metropolitan Transportation Planning and Programming
AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA, jointly with the Federal Transit Administration (FTA), amends its regulation on Planning and Assistance Standards that govern the development of transportation plans and programs for urbanized (metropolitan) areas. The FTA has codified the FHWA regulations for Metropolitan Transportation Planning and Programming into their regulations at 49 CFR 613 and joins the FHWA in making this change. This change provides the New York City metropolitan area additional time to review and update its transportation plan by waiving the regulatory requirement for a triennial plan update for the New York City metropolitan area for up to three years, until September 30, 2005. This action is necessary because the New York Metropolitan Transportation Council's (NYMTC) offices were destroyed by the terrorist attacks that occurred on September 11, 2001, and without this waiver, Federal highway and transit funding could be disrupted after September 30, 2002, when the current plan is set to expire. Furthermore, Congress recently enacted and the President signed HR 3880 that clearly expresses its intent to provide the New York City metropolitan area with relief from certain transportation conformity and metropolitan transportation planning requirements until September 30, 2005.

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. John Humeston, Metropolitan Planning and Policies Team (HEPM), (404) 562-3667 (metropolitan planning), 60 Forsyth Street, Suite 8M5; Atlanta, Georgia 30303-3104; or Mr. Reid Alsop, Office of the Chief Counsel (HCC-31), (202) 366-1371; 400 Seventh Street, SW., Washington, DC 20590. 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**

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.archives.gov> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background

The Clean Air Act of 1970 (CAA) (44 U.S.C. 7401 *et seq.*) requires each State

to develop a State Implementation Plan (SIP) that indicates how areas that are not meeting air quality standards intend to meet those standards. The Environmental Protection Agency (EPA) reviews and approves all SIPs. The SIP must specify emission limitations and other measures necessary to attain and maintain the national air quality levels for each pollutant.

In 1977, the Congress amended the CAA to prohibit Federal agencies from engaging in, supporting in any way, or providing financial assistance for any transportation activity that does not conform to the applicable SIP, including Federal or federally assisted transportation projects (Public Law 95-95; 91 Stat. 749). The Congress wanted to ensure that any Federal funding and approval for transportation plans, programs, and projects would be consistent with measures and goals of the SIP. In 1990, the Congress further amended the CAA by integrating it with the transportation planning process and conditioning Federal approval and funding of transportation activities on their demonstrated conformity with the applicable SIP.

The entity responsible for developing transportation plans and programs for urbanized areas of a State is the Metropolitan Planning Organization (MPO). Section 134(g) of title 23, U.S. Code, requires each MPO to prepare and update periodically a long-range transportation plan for its metropolitan area. The MPO must coordinate the development of this long-range plan with the SIP in all metropolitan areas that are nonattainment or maintenance areas for ozone, carbon monoxide, or particulate matter under the CAA (23 U.S.C. 134(g)(3)). These statutory mandates for MPOs have been codified in the FHWA regulations for Metropolitan Transportation Planning and Programming at 23 CFR 450 subpart C. Additionally, the Federal Transit Administration (FTA) adopts these regulations at 49 CFR 613 subpart A where the FTA cross-references and incorporates by reference the FHWA regulations. The FTA concurs with the changes made by this final rule to 23 CFR 450.322(a).

Section 134(g) states that the transportation plan shall be reviewed and updated periodically, according to a schedule that the Secretary of Transportation (hereinafter Secretary) determines to be appropriate. The Secretary, through the Federal Highway Administrator, has outlined the schedule for reviewing and approving the MPO's transportation plans in 23 CFR 450.322(a). The transportation plan has a 20-year horizon and must be

reviewed and updated at least triennially in any nonattainment and maintenance areas (23 CFR 450.322(a)).

The New York City metropolitan area includes an urbanized area for the purposes of section 134 and has been designated as a nonattainment area for the purposes of the CAA. The MPO responsible for the New York City metropolitan area is the New York Metropolitan Transportation Council (NYMTC). The NYMTC last reviewed and updated its transportation plan on September 30, 1999, and without this proposed amendment would be required to again review and update the plan by September 30, 2002. Unfortunately, the NYMTC occupied offices in the World Trade Center in Manhattan and their offices were destroyed by the terrorist attacks on the World Trade Center buildings on September 11, 2001. Therefore, it will be impossible for NYMTC to update its transportation plan by September 30, 2002, as required by 23 CFR 450.322(a). This could disrupt Federal highway and transit funding after that date.

In addition to the long-range plan, the MPO must develop a transportation improvement program (TIP) for the area (23 U.S.C. 134(h)(1)(A)). The TIP must be updated every two years and approved by the MPO and the Governor (23 U.S.C. 134(h)(1)(D)). The New York metropolitan area last updated their TIP on November 1, 2001.

Recently, the President signed into law HR 3880 in order to provide NYMTC additional time to review and update its TIP, and prepare conformity determinations, by providing relief from certain transportation conformity and metropolitan transportation planning requirements until September 30, 2005. HR 3880 exempts the New York City area's current TIP and plan from the Clean Air Act's conformity requirements until September 30, 2005. The intent is to provide NYMTC additional time to organize and become operational again in order to work on a new plan and TIP in the aftermath of the September 11, 2001, terrorist attacks on that area.

For the same reasons, the FHWA, in conjunction with the FTA, amends its regulation on Planning and Assistance Standards, which governs the development of transportation plans and programs for urbanized (metropolitan) areas, to provide New York City metropolitan area additional time to review and update its transportation plan. In urbanized nonattainment areas, such as the New York City area, the transportation plan is required to be "revised and updated at least triennially * * *" 23 CFR 450.322(a). The transportation plan for

the New York City metropolitan area was last updated on September 30, 1999. The recently enacted HR 3880 that provides NYMTC a temporary waiver from certain statutory and regulatory transportation conformity and metropolitan transportation planning requirements is a clear indication of Congressional intent that the New York City metropolitan area be given relief from the closely related regulatory requirement for updates of the plan, codified in 23 CFR 450.322(a).

Consequently, the FHWA hereby amends the regulation on Planning and Assistance Standards, that governs the development of transportation plans and programs for urbanized (metropolitan) areas and statewide transportation plans and programs, to provide the New York City metropolitan area additional time to review and update its transportation plan. This action waives the regulatory requirement for a triennial plan update for the New York metropolitan area for up to three years, until September 30, 2005, consistent with the date set by the Congress. Since the Congress expressed its intent to provide the NYMTC additional time to review and update its TIP, it is consistent for the FHWA to amend its regulations to support the congressional action to provide relief for NYMTC.

Rulemaking Analyses and Notices

In accordance with section 553(b)(3)(B) of the Administrative Procedure Act, the FHWA believes that good cause exists to waive prior notice and opportunity for public comment as it is impracticable and contrary to the public interest. The Congress has clearly expressed its intent that the NYMTC should be afforded additional time to review and update their plan and TIP by enacting HR 3880. It is unnecessary to provide prior notice and opportunity for public comment for this regulatory change that is consistent with and implements the intent of Congress. Furthermore, prior notice and opportunity for public comment is impracticable because the current plan is set to expire on September 30, 2002, which does not provide sufficient time to obtain public comment on this action. The NYMTC occupied office space in the World Trade Towers that were destroyed in the terrorist attack of September 11, 2001, and it is impossible for the NYMTC to review and update its transportation plan by September 30, 2002. If NYMTC does not have a new plan or a waiver from the requirement to have a new plan on that date, then transportation projects may not advance. Therefore, with the imminent

expiration of the current plan and the clear Congressional intent to provide a temporary waiver to the New York City metropolitan area from certain transportation conformity and metropolitan planning requirements, the FHWA believes good cause exists to waive prior notice and opportunity for comment.

For the reasons stated above, the FHWA believes good cause exists to waive prior notice and opportunity for comment. Additionally, in accordance with section 553(d)(3) of the APA, the FHWA believes that good cause exists to make this rule effective upon publication in the **Federal Register**. Without the relief granted by this action, the New York City metropolitan area would not be able to advance any transportation projects after their current plan expires on September 30, 2002, unless and until the NYMTC is able to review and update their plan or a waiver from this requirement. Since the NYMTC occupied office space in the World Trade Center that was completely destroyed on September 11, 2002, it will be impossible for the NYMTC to create a new transportation plan in that time under the current circumstances. Therefore, it is necessary to amend our regulation to provide the necessary relief contemplated by Congress as soon as possible.

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

We have determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866 and under Department of Transportation regulatory policies and procedures. This action is intended to reduce current regulatory burdens on the NYMTC for a temporary time period. In preparing this action, the FHWA has sought to maintain existing flexibility of operation wherever possible for States, MPOs, and other affected organizations and utilize already existing processes to accomplish any new tasks or activities.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Public Law 96-354; 5 U.S.C. 601-612), we have evaluated the effects of this rule on small entities, such as, local governments and businesses. We believe that the flexibility available to States and MPOs in responding to requirements has been maintained, if not enhanced, in this proposal. Accordingly, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient Federalism implications on States and local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The Transportation Equity Act for the 21st Century (TEA-21) (Public Law 105-178; 112 Stat. 107) and its predecessors authorize the Secretary to implement the provisions for metropolitan and statewide planning. We believe that policies in these proposed rules are consistent with the principles, criteria and requirements of the Federalism Executive Order and the TEA-21.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway planning and Construction; 20.500, Federal Transit Capital Improvement Grants, 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA)(44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

The reporting requirements for statewide transportation plans and programs are approved under OMB control number 2132-0529. The information collection requirements addressed under the current OMB approval number (2132-0529) impose a total burden of 241,850 hours on the planning agencies that must comply with the requirements in the existing regulation.

National Environmental Policy Act

We have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). It is our determination this action is consistent with the provisions of 23 CFR 771.117(c)(20) which deems the issuance of regulations of this nature to

meet the requirements for a Categorical Exclusion.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year. (2 U.S.C. 1531 *et seq.*)

The requirements of 23 U.S.C. 134 and 135 are supported by Federal funds administered by the FHWA and the FTA. There is a legislatively established local matching requirement for these funds of twenty percent of the total project cost. The FHWA and the FTA believe that the costs of complying with these requirements are predominantly covered by the funds they administer.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that this final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Regulation Identification Number

A regulation identification number (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 April and October of every year. The RINs contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 450

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

Issued on: October 2, 2002.

Mary E. Peters,
Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, by amending part 450 as set forth below:

PART 450—PLANNING ASSISTANCE AND STANDARDS

1. The authority citation for part 450 continues to read as follows:

Authority: 23 U.S.C. 134, 135, 217(g), 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5306; 49 CFR 1.48(b) and 1.51.

2. Revise § 450.322(a) to read as follows:

§ 450.322 Metropolitan transportation planning process: Transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a twenty-year planning horizon. The plan shall include both long-range and short-range strategies/actions that lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and goods. The transportation plan shall be reviewed and updated at least triennially in nonattainment and maintenance areas and at least every five years in attainment areas to conform its validity and consistency with current and forecasted

transportation and land use conditions and trends and to extend the forecast period, except that the transportation plan for the New York Metropolitan Transportation Council that was reviewed and updated on September 30, 1999, shall be reviewed and updated no later than September 30, 2005. The transportation plan must be approved by the MPO.

* * * * *

[FR Doc. 02–25515 Filed 10–3–02; 11:54 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–114]

RIN 2115–AA97

Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones around high capacity passenger vessels, including international ferries, located in the Portland, Maine, Captain of the Port zone. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts against these vessels. Persons and vessels are prohibited from entering these security zones without permission of the Captain of the Port, Portland, Maine.

DATES: This rule is effective from September 25, 2002, until December 1, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Marine Safety Office Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the warnings given by national security and intelligence officials that there is an