This one concern with today's order should not be interpreted, however, as diminishing in any way my enthusiastic support for this otherwise excellent order. I commend my colleagues for taking this important and much needed step.

For these reasons, I concur in part with today's order.

William L. Massey,
Commissioner.

Brownell, Commissioner, *concurring:*

1. We are adopting behavioral rules for market participants in the electric and natural gas markets. No one can question the good intention behind these behavioral rules. As I have stated before, if there are violations of our rules, regulations or policies, we must be willing to punish and correct. Concurrently, if there is misconduct by market participants that is intended to be anticompetitive, we must have the ability to remedy those market abuses.

2. Conversely, when we originally proposed behavioral rules, I had a number of concerns. I was concerned that the use of vague terms would create uncertainty and, thereby, undermine the good intentions of the rules. I feared that subsequent applications of the proposed behavior rules to real world actions could result in overly proscriptive ''rules of the road'' that will dampen business innovation and creative market strategies. The net effect would be less competition and the associated higher costs to consumers. I was concerned that we may be proposing a model that simply does not fit with the larger lessons we have learned in fostering competition over the past two decades, particularly in the gas market.

3. It is difficult to strike the right balance. I have carefully weighed the comments and believe the revisions and clarifications to the proposed behavioral rules achieve the appropriate balance. We clarify that these rules do not impose a ''must offer'' requirement. We revise the definition of manipulation to relate to actions that are ''intended to or foreseeably could'' manipulate markets. We add the exclusion that action taken at the direction of an RTO or ISO does not constitute manipulation.

4. Commenters also challenge the sufficiency of the term ''legitimate business purpose'' in distinguishing between prohibited and non-prohibited behavior. We clarify that transactions with economic substance, in which a seller offers or provides a service to a buyer where value is exchanged for value, are not prohibited behavior. Behavior driven by legitimate profit maximization or that serves important market functions is not manipulation. Moreover, I think it is important to recognize that scarcity pricing is the market response to a supply/demand imbalance that appropriately signals the need for infrastructure. For example, the high prices of 2000–2001 that reflected supply/demand fundamentals resulted in the first new power plants being constructed in California in ten years; price risk being hedged through the use of long-term contracting; and renewed efforts to correct a flawed market design.

5. We have also adopted measures that require accountability. A complaint must be brought to the Commission within 90 days after the calendar quarter that the manipulative action was alleged to have occurred. The 90-day time limit strikes an appropriate balance between providing sufficient opportunity to detect violations and the market's need for finality. The Order also places a similar time limit on Commission action. As a matter of prosecutorial policy, the Commission will only initiate a proceeding or investigation within 90 days from when we obtained notice of a potential violation through either a hotline call or communications with our enforcement staff.

6. While these rules are designed to provide adequate opportunity to detect, and the Commission to remedy, market abuses and are clearly defined so that they do not create uncertainty, disrupt competitive commodity markets or prove simply ineffective, competitive markets are dynamic. We need to periodically evaluate the impact of these rules on the electric and gas markets. We have directed our Office of Market Oversight and Investigation to evaluate the effectiveness and consequences of these behavioral rules on an annual basis and include their analysis in the State of the Market Report.

Nora Mead Brownell.

[FR Doc. 03–29300 Filed 11–25–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

23 CFR Part 476

RIN 2125–AF00

Interstate Highway System

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

ACTION: Final rule.

SUMMARY: This final rule removes regulations that prescribed policies and procedures for implementation of section 103(e)(4) of title 23, United States Code, which permitted the withdrawal of Interstate System segments and the substitution of public mass transit or highway projects or both. The Congress recognized the expiration of this program by eliminating the underlying statutory authority for this regulation. Therefore, the Federal Highway Administration and the Federal Transit Administration remove the regulations.

EFFECTIVE DATE: November 26, 2003.

FOR FURTHER INFORMATION CONTACT: For FHWA: Donald J. West, Office of Program Administration, HIPA–10, (202) 366–4652, or Steve Rochlis, Office of the Chief Counsel, (202) 366–1395, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For FTA: Rhoda Shorter, Office of Program Management, TPM–10, (202) 366–0206, and Scott Biehl, Office of the Chief Counsel, (202) 366–4063, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours for the FTA are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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 also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

In 1973, the Interstate System was about 83 percent complete; however, due to changed social, economic, and environmental conditions, many States realized it would be impracticable or unnecessary to construct some uncompleted segments of the Interstate, particularly in urbanized areas. But these States were reluctant to give up these segments for fear of losing substantial amounts of Federal-aid funds. Therefore, the Federal-Aid Highway Act of 1973 (Pub. L. 93–87, 87 Stat. 250, August 13, 1973), amended title 23, United States Code, by adding section 103(e)(4) to allow uncompleted or planned highways on the Interstate System in urbanized areas to be withdrawn and their funding entitlements be transferred to mass transit projects. This became known as the ''Interstate withdrawal and substitution program'' (also known as the ''Interstate Transfer program'') and it provided States with the opportunity to request withdrawal of a non-essential segment of the Interstate System, and the substitution of transit projects to serve the area that would have been served by the withdrawn segment. As a result of this Act, the Federal Highway Administration together with the Federal Transit Administration (known as the Urban Mass Transit Administration at that time) promulgated 23 CFR Part 476, Interstate Highway System.[1] Subpart D of this

[1] *See* final rule published on June 12, 1974, at 39 FR 20658.

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

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

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

In 1998, the Congress enacted the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) and recognized the expiration of the Interstate withdrawal and substitution program by removing 23 U.S.C. 103(e)(4).[3] Therefore, since the time limits for the Interstate withdrawal and substitution program have long expired, the underlying statutory authority for 23 CFR part 476 has been eliminated, and the Interstate withdrawal and substitution program no longer exists, it is appropriate to remove 23 CFR part 476 from the Code of Federal Regulations.

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

Rulemaking Analyses and Notices

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

The APA also allows agencies, upon a finding of good cause, to make a rule effective immediately upon publication (5 U.S.C. 533(d)(3)). For the same reasons discussed above, the agencies also believe good cause exists for making this action effective immediately upon publication.

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

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

This final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the agencies have evaluated the effects of this action on small entities and have determined that the action will not have a significant economic impact on a substantial number of small entities.

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

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This rule simply deletes an obsolete regulatory provision.

Executive Order 13132 (Federalism Assessment)

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

[2] *See* final rule published on October 20, 1980, at 45 FR 69396.

[3] *See* section 1106(b) of TEA–21.

federalism assessment. The FHWA and the FTA have also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and have determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA and the FTA have analyzed this final action under Executive Order 13175, dated November 6, 2000, and believe that this action 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.

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.

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 each year. The RIN 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 476

Grant programs—transportation, Highways and roads, Mass transportation.

■ In consideration of the foregoing and under the authority of 23 U.S.C. 315, sec. 1106(b) of Public Law 105–178, 112 Stat. 107, 136 (1998), and 49 CFR 1.48, the FHWA and FTA are amending title 23, Code of Federal Regulations, by removing part 476, as follows:

PART 476—[REMOVED]

Issued on: November 20, 2003.

Mary E. Peters,

Federal Highway Administrator.

Jennifer L. Dorn,

Federal Transit Administrator.

[FR Doc. 03–29596 Filed 11–25–03; 8:45 am]

BILLING CODE 4910–22–P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 902

[NCPPC 106]

Dispute Adjudication Procedures

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Final rule.

SUMMARY: The Compact Council established pursuant to the National Crime Prevention and Privacy Compact (Compact) is publishing this rule to establish Dispute Adjudication Procedures. These procedures support Article XI of the Compact.

EFFECTIVE DATE: This final rule is effective on December 26, 2003.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Jeffrey D. Harmon, Compact Council Chairman, Maine State Police, 36 Hospital Street, Augusta, Maine 04333–0042, telephone number (207) 624–7060.

SUPPLEMENTARY INFORMATION: This document finalizes the Compact Council rule proposed in the **Federal Register** on November 25, 2002, (67 FR 70567). The Compact Council accepted comments on the proposed rule from interested parties until December 26, 2002, and is finalizing the rule with certain changes in response to the comments.

Significant Comments or Changes

Two comments from the same party questioned the Council's reference in the Supplementary Information that ''the Compact eliminates barriers to the sharing of criminal history record information among Compact parties for noncriminal justice purposes'', asking if the Compact encompassed all noncriminal justice purposes or only those criminal history record information requests supported by fingerprint submissions. The Council's response was that the Compact encompasses all noncriminal justice purposes. The second comment asked for verification of the quoted statement in the Supplementary Information that ''Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes, not to conflict with the FBI administration of the III System for criminal justice purposes.'' The Council's response was that this is a direct quote from the Compact, 28 CFR 14616, Article VI.

Nine comments referencing particular subsections of the proposed rule were received from a second party. The first comment referenced the use of and subsequent referral to the term ''directly aggrieved'' (§ 902.2, paragraphs (a) and (b)). To eliminate what was interpreted as a ''circular'' reference, the Council is revising paragraph (a) to state,

''Cognizable disputes may be based upon:

* * * * *'',

while paragraph (b) is left unchanged.

A second comment asked the following questions about section 902.3(a): What if the dispute also poses a conflict of interest for the Chair? Could a deputy name the substitute member? The Council's original intent was that *any* Committee member with a conflict of interest would excuse him/herself from the hearing on that topic. Clarifying language is being added to 902.3 paragraph (a):

> In the case when the Compact Council Chair is the committee member with the conflict, the Chair shall take appropriate steps to appoint a replacement that resolves the conflict.

Comment 3, on section 902.3(c), labeled the use of the phrase ''lean toward'' as vague. The Council is modifying paragraph (c) to indicate that the dispute resolution committee shall recommend hearings to all disputants who raise issues that are not clearly frivolous or without merit, and that the committee will give written explanation