

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9R, signed August 1, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1.

The Class E airspace designations listed in this document will be published subsequently in the Order.

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Issued in Fort Worth, TX, on May 20, 2008.

**Joseph R. Yadouga,**

*Acting Manager, Operations Support Group,  
ATO Central Service Center.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Transit Administration

#### 23 CFR Part 774

RIN 2125-AF14

RIN 2132-AA83

### Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites; Correction

**AGENCIES:** Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Correcting amendment.

**SUMMARY:** This rule makes a technical correction to the final regulations, which were published in the **Federal Register** on Wednesday, March 12, 2008, that govern Section 4(f) approvals for the FHWA and the FTA. The amendment contained herein makes no substantive change to the FHWA or the FTA regulations, policies, or procedures. This rule clarifies an ambiguity in the language of the regulatory text caused by a global word change implemented in the Final Rule as a result of comments received in response to the Notice of Proposed Rulemaking.

**DATES:** This rule is effective July 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** For FHWA, Diane Mobley, Office of the Chief Counsel, (202) 366-1366; or Lamar Smith, Office of Project Development and Environmental Review, (202) 366-8994. For FTA, Joseph Ossi, Office of Planning and Environment, (202) 366-1613; or Christopher VanWyk, Office of the Chief

Counsel, (202) 366-1733. Both agencies are located at 1200 New Jersey Avenue, SE., Washington, DC 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:

##### 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 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.gpoaccess.gov/nara>.

##### Background

This rule makes a technical correction to the regulations that govern Section 4(f) approval procedures for the FHWA and the FTA found at 23 CFR part 774. In its final rule published in the **Federal Register** on March 12, 2008, at 73 FR 13368, the FHWA and FTA replaced the phrase "feasible and prudent project alternative" with the phrase "feasible and prudent avoidance alternative" to clarify that the statute requires a determination whether a feasible and prudent alternative exists that avoids using a Section 4(f) property. This phrase was globally replaced throughout the final rule. However, where this phrase was replaced in section 774.3(c), the new phraseology could be misinterpreted to require consideration of the already rejected, infeasible, or imprudent avoidance alternatives a second time. The preamble and regulatory text of the NPRM, and the preamble of the final rule, make clear that the intent of section 774.3(c) is to provide direction for how to analyze and select an alternative when it has been determined that no feasible and prudent avoidance alternatives exist and all viable alternatives use some Section 4(f) property. In order to correct the error caused by the global phrase change, and to clarify the intent of section 774.3(c) as noted in the preamble to the final rule, the FHWA and FTA have added the phrase "from among the remaining alternatives that use Section 4(f) property" to the regulatory text of section 774.3(c).

##### Rulemaking Analyses and Notice

Under the Administrative Procedure Act (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 FHWA and the FTA find that notice and comment for this rule is unnecessary and contrary to the public interest because it will have no substantive impact, is technical in nature, and relates only to management, organization, procedure, and practice. The FHWA and the FTA do not anticipate receiving meaningful comments on it. States, local governments, transit agencies, and their consultants rely upon the environmental regulations corrected by this action. These corrections will reduce confusion for these entities and should not be unnecessarily delayed. Accordingly, for the reasons listed above, the agencies find good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment.

##### 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 U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. This rule only entails minor corrections that will not in any way alter the regulatory effect of 23 CFR part 774. Thus, 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 FHWA and the FTA 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 final rule will not make any substantive changes to our regulations or in the way that our regulations affect small entities; it merely corrects technical errors. For this reason, 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 does not impose any requirements on State, local, or tribal governments, or the private sector and, thus, will not require those entities to expend any funds.

#### **Executive Order 13132 (Federalism)**

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

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

#### **Paperwork Reduction Act**

This action does not create any new information collection requirements for which a Paperwork Reduction Act submission to the Office of Management and Budget would be needed under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

#### **National Environmental Policy Act**

The FHWA and the FTA 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 FTA have analyzed this action under Executive Order 13175, dated November 6, 2000, and concluded that this rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government; and will not preempt tribal law. There are no requirements set forth in this rule that directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

#### **Executive Order 12988 (Civil Justice Reform)**

This rule 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)**

Under Executive Order 13045, Protection of Children from Environmental Health and Safety Risks, this final rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

This final 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)**

This final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA and FTA 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 this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### **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 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 774**

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

Issued on: May 27, 2008.

**James D. Ray,**  
*Acting Federal Highway Administrator.*  
**James S. Simpson,**  
*FTA Administrator.*

■ In consideration of the foregoing, 23 CFR part 774 is amended as set forth below.

### **Federal Highway Administration**

#### **Title 23—Highways**

#### **PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(F))**

■ 1. The authority citation for part 774 continues to read as follows:

**Authority:** 23 U.S.C. 103(c), 109(h), 138, 325, 326, 327 and 204(h)(2); 49 U.S.C. 303; Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144); 49 CFR 1.48 and 1.51.

■ 2. Amend § 774.3 by revising paragraph (c) introductory text to read as follows:

#### **§ 774.3 Section 4(f) approvals.**

\* \* \* \* \*

(c) If the analysis in paragraph (a)(1) of this section concludes that there is no feasible and prudent avoidance alternative, then the Administration may approve, from among the remaining alternatives that use Section 4(f) property, only the alternative that:

\* \* \* \* \*

[FR Doc. E8–12360 Filed 6–2–08; 8:45 am]

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### **DEPARTMENT OF HOMELAND SECURITY**

#### **Coast Guard**

#### **33 CFR Part 117**

[USCG–2008–0337]

#### **Drawbridge Operation Regulation; Arthur Kill, Staten Island, NY and Elizabeth, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Commander, First Coast Guard District, has issued a new temporary deviation from the regulation governing the operation of the Arthur Kill (AK) Railroad Bridge across Arthur Kill at mile 11.6 between Staten Island, New York and Elizabeth, New Jersey. This deviation is necessary to test a new operating rule for the bridge that will help determine the most equitable and safe solution to facilitate the present and anticipated needs of navigation and rail traffic. This deviation requires the AK Railroad Bridge to remain in the open position but allows the bridge owner/operator to schedule bridge closure periods after consultation with the marine community.