

and the Park Roads and Parkways program, the FWS and the Refuge Roads program, and the BIA and the Indian Reservations Roads program. The commenters in favor of this proposal point out the fact that transportation planning functions for the different Federal lands highways are performed by various Federal, State, Tribal and local entities, depending on ownership of the roadways and responsibilities for constructing and maintaining the facilities.

The Wisconsin DOT and the Kentucky Transportation Cabinet offered an opposite view. These two State DOTs requested that we develop only one general rule applicable to all four agencies. The Wisconsin DOT suggested that this rule be flexible so that it recognizes the different approaches used by the States. The Kentucky Transportation Cabinet recommended that the rule should require the Federal land management agencies (FLMAs) to develop Memoranda of Understanding or Agreements that would address the consistency between Federal land transportation planning procedures and those required under 23 U.S.C. 134 and 135. The Kentucky Transportation Cabinet was concerned that the additional rules might jeopardize existing procedures already in effect.

*Response:* Following the recommendations from the majority of commenters, the FHWA, in consultation with each appropriate Federal land management agency, developed a separate rule pertaining to each agency: the FS, the NPS, the FWS, and the BIA. The variance among the rules allows for the significant differences in the ownership, jurisdiction, and maintenance responsibilities that the FLMAs exercise over the subject roadways addressed in the rule. To ensure uniformity, the FHWA coordinated the development of each NPRM, so that similar text and format are contained in each of the rules.

#### *Addressing the Management Systems Requirements*

*Comments:* Many States believe that the management systems should only be developed as needed and should relate to systems that are already implemented by States and local agencies. It was recommended that the FHWA encourage the Federal agencies to explore and use the States' existing systems. The States also recommended the systems be tailored to fit local conditions, and be applicable solely to the portion of the Federal lands highways owned and maintained by Federal agencies. Many of the States are

concerned that the implementation of the management systems may affect the current working relationships among State, Tribal, local, and Federal agencies. The Wisconsin DOT encouraged the FHWA to work with the FLMAs and State Transportation Departments to clarify ownership discrepancies between Federal and State data. They suggested that the FLMAs have accurate data reflecting the amount of mileage the agencies own by location. Further, these data have to agree with data reported by States in the Highway Performance Monitoring System (HPMS) database.<sup>2</sup>

*Response:* The stakeholders' concerns presented above were considered in the development of this NPRM. Each of the proposed management system rules calls for the FHWA, in cooperation with the FLMA, to develop an implementation plan or implementation procedures for each of the management systems. In addition, flexibility is provided to determine criteria for the need and applicability of each of the FLMA's management systems. These implementation plans will provide the opportunity to relate the FLMA management systems to systems already implemented by States and local agencies. It will also allow the management systems to be tailored to fit a broad range of local conditions, and to avoid inefficient duplication of management systems already in use by the States. Development of the implementation plans will provide an opportunity to strengthen the working relationships among Federal, State, Tribal and local agencies, as well as define responsibility for and ownership of data. In fact, throughout the proposed regulation, we use the term "tri-party partnership" to refer to the joint, cooperative, shared partnership among the Federal Lands Highway Division, the State Department of Transportation and the Forest Service that carry out the FH program.

*Comments:* The Wisconsin DOT also stated that the FHWA should clarify that this rule and the National Highway System (NHS) Designation Act of 1995, Public Law 104-59, 109 Stat. 568, do not make the implementation of management systems mandatory.

*Response:* While it is correct that the Public Law 104-59 made the management systems optional for States

<sup>2</sup> The HPMS was developed in 1978 as a national highway transportation system database. It includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional system, and certain summary information for urbanized, small urban and rural areas. Additional information about this database is available online at the URL: <http://www.fhwa.dot.gov/ohim>.

and Metropolitan Planning Organizations (MPOs), except for the congestion management systems in MPOs with a population greater than 200,000, section 1115(d) of TEA-21 applies to the Federal land management agencies, not directly to the States; however, the States may be requested to provide information. The TEA-21, enacted on June 9, 1998, amended 23 U.S.C. 204 to specify, "The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program." Therefore, the development and implementation of the management systems, where appropriate, is mandated by law for the Federal land management agencies.

#### **Approach to Structure of Proposed Regulation**

In the development of this proposed rule, the FHWA has attempted to minimize the level of data collection and analyses required. The FHWA now solicits comments on the extent to which this strategy has been achieved. Any comments suggesting that the strategy has not been successful should identify the specific reasons why requirements and/or provisions are burdensome. Suggestions to lessen burdens are welcome.

#### **Section-by-Section Analysis**

##### *Subpart A*

##### *Section 971.100 Purpose*

This section states that subpart A provides definitions for terms used in this rule.

##### *Section 971.102 Applicability*

This section states that the definitions in subpart A are applicable to this rule.

##### *Section 971.104 Definitions*

This section incorporates the terms defined in 23 U.S.C. 101(a), 49 U.S.C. 5302, and 23 CFR part 450. It also includes additional definitions for terms used in this part.

The phrase "Federal lands" or "Indian lands," as applicable, would be added to the definitions of "bridge management system (BMS)," "congestion management system (CMS)," "pavement management system (PMS)," and "safety management system (SMS)" to indicate the distinction between the Federal or Indian lands, and Federal-aid management systems (refer to 23 CFR part 500 for definitions of the Federal-aid management systems). The