

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 the 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 BIA, the FWS, the NPS, and the FS. 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.

Comments: Tribal representatives from the Committee, the USET, and the Council recommended against the proposed development of a rule relating to transportation planning and management systems for the IRR program in a process separate from the one presently underway through the Committee. In addition, they stated that the Committee would utilize the Indian Reservation Roads Program Transportation Planning Procedures and Guidelines (Guidelines),² that had been developed with Tribal consultation and implemented by the DOT in October 1999, to develop regulations that address transportation planning and management issues. These commenters believed that the proposed rule and the rule derived from the Guidelines would be inconsistent with each other.

Response: This proposed rule was developed to fulfill the requirement set forth by the TEA-21. This requirement was separate and apart from the negotiated rulemaking requirement for the IRR program. The language set forth in this NPRM is, with the exception of proposed funding sources, consistent with the draft language on management

systems set forth in the IRR negotiated rulemaking. While the Guidelines help the Indian Tribal Governments (ITGs) address transportation planning and management system requirements, the Guidelines do not meet the requirements for rulemaking set forth in the TEA-21.

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, 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.³

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.

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 and Metropolitan Planning Organizations (MPOs), except for the congestion management systems in MPOs with a population of 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 that "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 specific reasons why the requirements and/or provisions are burdensome. Suggestions to lessen burdens are welcome.

Section-by-Section Analysis

Subpart A

Section 973.100 Purpose

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

Section 973.102 Applicability

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

² "Indian Reservation Roads Program Transportation Planning Procedures and Guidelines," October 1999, is available at the URL: <http://www.fhwa.dot.gov/fhreports/indian/intro.htm>.

³ "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>.