

FEDERAL HIGHWAY ADMINISTRATION
RULEMAKING MANUAL

JULY 2000

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FOREWORD



U.S. Department
of Transportation

**Federal Highway
Administration**

Office of the Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

The Federal Highway Administration's (FHWA's) mission is to continually improve the quality and safety of the Nation's highway system and its intermodal connections. FHWA carries out this mission by providing leadership, expertise, resources and information in cooperation with its partners to enhance the country's economic vitality, the quality of life, and the environment.

The FHWA's regulatory program is a key element in accomplishing the FHWA's mission. The FHWA is committed to continuously improving the effectiveness and efficiency of its regulatory program. This FHWA rulemaking manual provides our employees with the methodologies and tools that they need to plan, organize, and produce effective regulations in a timely, efficient manner.

This manual will be an important companion as we continue on our "Quality Journey" toward the safest and most efficient and effective highway and intermodal transportation system in the world.

A handwritten signature in black ink that reads "Kenneth R. Wykle".

Kenneth R. Wykle

Administrator

ACRONYMS

ANPRM	Advanced Notice of Proposed Rulemaking
APA	Administrative Procedure Act
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CMAQ	Congestion Mitigation and Air Quality Improvement
DMS	Docket Management System
DOT	Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
E.O.	Executive Order
FACA	Federal Advisory Committee Act
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
HCC	Office of the Chief Counsel (FHWA)
HMS	Office of Management Systems (FHWA)
HOA	Office of the Administrator (FHWA)
IBR	Incorporation By Reference
MOA	Memorandum of Agreement
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NHS	National Highway System
NHTSA	National Highway Traffic Safety Administration
NPRM	Notice of Proposed Rulemaking
NTSB	National Transportation Safety Board
OFCCP	Office of Federal Contract Compliance Programs
OFR	Office of the Federal Register
OMB	Office of Management and Budget
OST	Office of the Secretary of Transportation
RFA	Regulatory Flexibility Act
RIN	Regulation Identification Number
SBREFA	Small Business Regulatory Enforcement Fairness Act
SHPO	State Historic Preservation Officer
SNPRM	Supplemental Notice of Proposed Rulemaking
STP	Surface Transportation Program
UMRA	Unfunded Mandates Reform Act
U.S.C.	United States Code

1.0 THE FHWA RULEMAKING PROGRAM OVERVIEW

1.1 The Regulatory Process

Background. In simple terms, a FHWA document that may require the members of the public to do something, or prohibit them from doing something, is a regulation. In this manual, the words regulation and rule are used interchangeably. FHWA authority to issue regulations comes from a number of different laws, and the FHWA issues regulations in a number of areas. However, to be valid, a regulation must not only be consistent with its underlying statute, but also must be promulgated in a procedurally correct manner. This manual describes those procedural requirements.

‘Regulation’ or ‘rule’ means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. Executive Order (E.O.) No. 12866

‘Regulatory action’ means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking. Executive Order (E.O.) No. 12866

[NOTE: See Appendix B for website addresses for relevant statutes, Executive Orders, and other rulemaking documents and resources.]

The process of developing and issuing a regulation is called "rulemaking." All FHWA rulemaking is technically "informal" as it does not require a formal hearing before an administrative body. This kind of rulemaking is also known as "notice and comment rulemaking" or "section 553 rulemaking" under the Administrative Procedure Act (APA) (Title 5, United States Code § 551, et seq.). Informal rulemaking generally requires that a notice of a proposed rulemaking (NPRM) first be published in the Federal Register. The NPRM must describe the proposed regulation and include the FHWA's legal authority to issue the regulation.

The issuance of an NPRM gives the public the opportunity to participate in the rulemaking by inviting them to submit written comments, and possibly also attend public meetings.

Notice and comment is generally required except for certain rules (e.g., interpretive rules, general statements of policy, rules of agency organization, procedure, or practice, or when the agency for good cause finds that providing notice and opportunity for public comment are impracticable, unnecessary, or contrary to the public interest). Additionally, a regulation may not become effective until 30 days after publication unless it falls within a specified exemption.

Congress has enacted statutes in addition to the APA that include other procedural rulemaking requirements. Procedural requirements are also found in Executive Orders (E.O.s) and Department of Transportation (DOT) policies. These other requirements are also discussed in this manual.

Administrative Law and the Rulemaking Process. Congress enacts the laws of the United States, subject to Presidential veto. Often, the laws are very general. Responsibility for detailed implementation of the laws is carried out by various executive and independent agencies, including the DOT and its operating administrations, including the FHWA. Statutes frequently authorize or direct the Secretary to issue regulations to carry out laws related to the FHWA. This authority is usually delegated to the FHWA Administrator and may be redelegated to the appropriate Program Manager or Director.

A regulation or rule has the force and effect of law. A regulation can create rights and obligations enforceable in a court. Often, civil or criminal penalties may be imposed for violations. Unlike members of Congress and the President, agency officials who promulgate regulations are not elected by the public. Therefore, to make sure that the regulations adequately respond to public needs and carry out Congressional intent, a number of procedural requirements exist. The Administrative Procedure Act --

- Provides for public notice and opportunity for comment on proposed rules,
- Requires an agency to explain the basis and purpose for its rule, and
- Provides for judicial review of the agency's actions.

These requirements apply to changes in existing regulations as well as promulgation of new regulations.

There has been continuing emphasis on ensuring that agency regulations are necessary, that the agency chooses the least burdensome regulatory approach to achieve the desired end, and that the net burdens of a regulation do not exceed the benefits to society to the extent consistent with the underlying statute. These regulatory policies are expressed in

E.O.s promulgated by the President (see Section 8.3 Executive Orders). E.O. 12866 contains specific guidance on regulatory planning and review. Additional Department of Transportation guidance is contained in DOT Order 2100.5 (see Section 8.4 DOT Policies). Other E.O.s also require each agency to identify and list all rulemaking projects. These lists, known as the Unified Regulatory Agenda, are published in the Federal Register in April and October of each year. The highest priorities, or those rulemakings likely to have the greatest impact, are also identified in the Regulatory Plan published in conjunction with the October Unified Agenda. See Section 3.4 Review and Approval Procedures for Proposed Rulemaking Projects. The Unified Agenda is also discussed in Sections 8.2.7 Regulatory Flexibility Act, and 8.3.2 Executive Order 12866, Regulatory Planning and Review.

The Office of Management and Budget (OMB), acting for the President, and the General Counsel of DOT, acting for the Secretary, oversee and review FHWA rulemaking activity to ensure that the FHWA acts within its delegated authority and in furtherance of Presidential and DOT policies. The Office of the Secretary (OST) and OMB review all regulatory actions. The OST review requirement is contained in DOT Order 2100.5. OMB authority to review arises from E.O. 12866. For non-significant rulemakings, the review is limited, but OST and OMB approvals are required before documents may be issued. E.O. 12866 requires that only "significant" regulatory actions be reviewed by OMB. Furthermore, the Paperwork Reduction Act requires that all rules containing a paperwork requirement be reviewed by OMB. OMB will communicate any reviews, concerns or comments to OST, and OST will forward them to FHWA. However, some types of routine rulemaking actions have been given blanket exemptions from OMB review. See Section 4.11 OST/OMB Review, Section 8.3.3 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Section 8.4.2 DOT Order 2100.5, Policies & Procedures for Simplification, Analysis, & Review of Regulations for more information.

1.2 The Federal Register and the Code of Federal Regulations

Before 1935, each Federal agency published its own regulations. There was no central system, and it was difficult for the public to find out if a regulation covered a particular activity. The Federal Register Act centralized and organized this process. All Federal agency rules of general applicability and future effect must be published in the daily Federal Register. The Federal Register is published each weekday by the Office of the Federal Register. In addition to rulemaking documents, notices of meetings, notices of study availability, notices of agency intent, notices implementing agency guidance, and policy statements may also be published in the Federal Register.

Publication of regulations in the Federal Register has an important legal aspect in an

enforcement action. Each member of the public is deemed to have “constructive notice” of the contents of an agency rule published in the Federal Register. It is not necessary to show that someone actually knew about a regulation, and ignorance of the rule does not excuse noncompliance. However, if an agency did not provide timely publication in the Federal Register, the agency would have to prove that a person had “actual notice” of the contents of a rule.

To ensure that documents submitted to the Federal Register are authentic and properly submitted by an agency, the Office of the Federal Register requires each agency to designate a liaison officer, a certifying officer, and alternates. The liaison officer serves as the contact between the Office of the Federal Register and the agency, and is authorized to represent the agency in all matters relating to publication requirements and the submission of documents. The certifying officer is responsible for submitting the original and the required number of certified copies of each document to be published. The chief of the Legislation and Regulations Division in the FHWA Office of Chief Counsel (HCC) is the FHWA's designated liaison officer and the certifying officer.

Rules with continuing effect are then codified in the Code of Federal Regulations (CFR). The CFR is broken down by subject into a number of titles. The CFR is updated annually.

Categories of materials published in the Federal Register and CFR. The following lists give examples of the types of documents that are or are not published in the Federal Register and the CFR:

Material Published in the Federal Register and Codified in the CFR:

- Material which confers a right or benefit, imposes an obligation, or otherwise affects the substantive rights of grant recipients, the public, or members of a class relative to FHWA programs;
- Statements of general policy or interpretations of general applicability included in codified FHWA directives;
- All other material for which codification is considered beneficial for the effective administration of FHWA programs.

Material Published in the Federal Register but not Codified in the CFR:

- Statements of general policy or interpretations of general applicability included in those FHWA directives that are not codified;

- Information that is of substantial public interest, but does not impose an obligation;
- All other material that is required to be published for public information under the Administrative Procedure Act, 5 U.S.C. 552(a)(1).

Material Not Published in the Federal Register:

- Instructions to FHWA personnel that do not affect the substantive rights of grant recipients, the public, or members of a class relative to FHWA programs;
- Detailed technical material;
- Restatements of statutory or codified requirements that set forth no new duties or benefits;
- Designations of forms and instructions on how and when they should be filled out and distributed.

Statutory Authority. The FHWA must have statutory authority to promulgate each regulation. As discussed above, statutes often direct the Secretary to issue regulations. Sometimes the statutory authority is very specific. It may direct that the Secretary issue regulations by a specific date, and that the regulations include specific provisions. Other times the statutory authority is very broad, allowing the Secretary to issue regulations as necessary to achieve a statutory purpose. These authorities may be delegated to the FHWA Administrator under 49 CFR 1.48. A single rulemaking may rely upon authority in several different statutes.

See Section 8.0 Legal and Procedural Requirements for Rulemaking, for more explanation of legislation, Executive Orders, and DOT policies that set out legal or procedural requirements for FHWA rulemaking activities.

1.3 FHWA Responsibilities

The mission of the FHWA is to administer programs to preserve, improve, and expand the surface transportation system and enhance its operations, efficiency, and intermodal

integration; provide innovative and effective research and development and market and implement this technology; provide oversight and accountability for public resources and ensure appropriate uniformity; provide for efficient freight and passenger mobility to strengthen economic and social linkages; protect and enhance the environment; and improve all aspects of surface transportation safety.

The Federal Highway Administration administers the highway transportation programs of the Department of Transportation under Title 23 U.S.C., other pertinent legislation, and the provisions of law cited in section 6(a) of the Department of Transportation Act (49 U.S.C. 104). The specific programs of the FHWA include the Federal-aid highway program, the highway infrastructure program, the Federal lands highway program, surface transportation research and technology, and international programs.

Most regulations promulgated by the FHWA are found in title 23 of the CFR. The FHWA has sole responsibility for the regulations in title 23 CFR, chapter I, parts 1 - 924. The FHWA and the National Highway Traffic Safety Administration (NHTSA) have joint responsibility for the regulations in title 23 CFR, chapter II, parts 1200 - 1275. See APPENDIX A – Assignment of Regulatory Responsibilities for a list of FHWA offices responsible for specific title 23 parts.

2.0 ROLES AND RESPONSIBILITIES IN THE RULEMAKING PROCESS

The following are descriptions of critical roles and responsibilities in the rulemaking process.

2.1 Program Office

The program office is the technical office responsible for the following:

- Identifying the need for rulemaking;
- Evaluating the technical sufficiency of existing regulations that fall within its assigned responsibilities;
- Developing listings for the Semiannual Regulatory Agenda within its assigned responsibilities;
- Providing a representative(s) with the subject-matter expertise and judgment needed to produce rulemaking documents;
- Developing the technical content of rules within the office's assigned responsibility; and
- Drafting rulemaking documents.

The **program office director** is responsible for reviewing regulatory documents developed by his or her staff. Approval of regulatory documents by program office directors signifies that he or she supports the--

- Proposed project and agrees with its scope;

- Proposed approach, including the proposed resolution of all critical issues related to the project; and
- Proposed dates for completion of the project.

2.2 Rulemaking Team

Rulemaking teams are created after a program office has decided to begin a regulatory project to develop the regulatory actions and supporting materials. Each team's primary responsibilities are to (1) support the program office in the resolution of regulatory issues, (2) resolve issues or elevate issues to management for resolution, and (3) prepare complete, high-quality regulatory packages.

Each team member represents the policy positions and perspectives of his or her management. During the drafting process, team members are responsible for ensuring that their directors or managers agree with the resolution of all critical issues involved with the rulemaking project and the regulatory approach of the rulemaking document. For significant projects, this agreement should be obtained at the Core Business Unit Program Manager level.

Rulemaking team members are designated by their Office Directors for each rulemaking project based on the recommendations of the offices involved and, at a minimum, consist of the following:

- A program office staff member who provides the technical expertise within his or her area of responsibility. This person is also the team leader.
- A lawyer from the HCC Program Legal Services Division (HCC-30) or the HCC Administrative Law and Technology Division (HCC-32) who provides legal perspective and analysis of issues and solutions and reviews documents for content and policy.
- A lawyer from the HCC Legislation and Regulations Division (HCC-10) who reviews documents for form and legality and ensures that the document contains all formal determinations and assessments. Because of HCC-10's role as liaison with OST, the lawyer also may identify policy and legal concerns that have been or can be expected to be raised by OST or OMB.

A rulemaking team may also have any of the following:

- An economist (often a contractor) who is responsible for providing the cost and benefit analysis for the proposed rulemaking action and developing certain other analyses for the preamble of the rulemaking document, as described in Sections 4.0, 5.0, and 6.0.
- Individuals from other program offices that have an interest in the project, particularly when the scope of the project crosses organizational lines or areas of responsibility. These individuals provide additional technical expertise and may participate fully on the rulemaking team or on an as-needed basis.

2.3 Rulemaking Team Leader

The team leader is the person from the program office who provides the technical expertise for the substance of the rulemaking and who provides the leadership to see the document through to publication in the Federal Register. During the rulemaking process the Team Leader is also responsible for the following:

- Recording Major Issues. Keep a timely record of the major issues that arise during the rulemaking process and the resolution of those issues.
- Rulemaking Project Folder. Create an electronic folder for all documents associated with the rulemaking project. When creating the project folder as well as the rulemaking documents, the Team Leader should give the rulemaking team members access to the folder and the documents. The folder should include meeting minutes, lists of alternative actions considered, the original milestone schedule and any amendments to it, the drafts of the rulemaking documents, the economic evaluation, and other related documents.

2.4 Office of the Chief Counsel (HCC)

The Office of Chief Counsel at FHWA Headquarters provides legal support for the FHWA regulatory program, primarily through the Legislation and Regulations Division (HCC-10), the Program Legal Services Division (HCC-30), and the Administrative Law and Technology Division (HCC-32). The Chief Counsel is delegated the authority to issue amendments correcting technical or administrative errors or omissions in rules and regulations pertaining to Federal-aid Highways and Defense Access Roads (23 U.S.C.

315). Exercise of this authority is subject to prior coordination with the Manager of the Administration Core Business Unit, when the regulatory material to be corrected is also contained in an FHWA directive, and with affected program offices as appropriate (see FHWA Order M 1100.1A, FHWA Delegations and Organization Manual).

2.4.1 Legislation and Regulations Division

The Legislation and Regulations Division (HCC-10) is responsible for the following:

- Provides legal services in connection with the development and coordination of all FHWA regulations and reviews directives and rulemaking actions for legal sufficiency and compliance with applicable Federal laws, Executive Orders, and regulations.
- Provides a counsel to serve as the Regulations Officer whose responsibilities include preparing FHWA's Semi-Annual Regulations Agenda and Annual Regulatory Program.
- Coordinates the preparation of comments to proposed regulations issued by other agencies or DOT modes that impact FHWA's operations.
- Serves as the Federal Register Liaison and alternate.
- Processes material prepared for publication in the Federal Register and coordinates the rulemaking process with the Office of the General Counsel, the Office of Management and Budget, and the Office of the Federal Register.
- Coordinates the maintenance of the docket of public comments on all proposed FHWA regulations within the DOT Docket Management System.

2.4.2 Program Legal Services Division and Administrative Law and Technology Division

The Program Legal Services Division (HCC-30) or the Administrative Law and Technology Division (HCC-32) is responsible for the following:

- Provides a representative for each rulemaking project, reviews rulemaking documents, and furnishes advice and opinions on the legal implications and programmatic consequences of proposed regulatory actions.

- Interprets regulations and reviews other related agency documents, such as directives.

2.5 Administrator

As head of the FHWA, the Administrator is responsible for setting the overall policy and direction of the FHWA and resolving any rulemaking issues raised by the program offices or the Office of the Chief Counsel. The Administrator or the Deputy Administrator (or, in their absence, the Executive Director) issues all rulemaking documents, such as NPRM's and final rules.

2.6 Office of the Secretary of Transportation (OST)

If a proposed or final rule is considered "significant," OST concurrence is required. OST also is responsible for submitting significant proposed and final rules to OMB for review. See Section 8.0 Legal And Procedural Requirements For Rulemaking for a discussion of the meaning of the term "significant" and information on OST/OMB requirements.

2.7 Office of Management and Budget (OMB)

While all regulatory actions are reviewed by OMB in accordance with FHWA policy, OMB is required to review certain rulemakings by E.O. 12866 and the Paperwork Reduction Act. See Sections 8.2.6 Paperwork Reduction Act, and 8.3.2 Executive Order 12866, Regulatory Planning and Review. Also see Section 8.0 Legal And Procedural Requirements For Rulemaking for a discussion of Office of the Secretary of Transportation (OST) review and OMB review.

2.8 Office of the Federal Register

The Office of the Federal Register is a government agency that publishes the official text of Federal laws, Federal agency rules and notices, Presidential documents, and descriptions of Federal organizations, programs, and activities. Federal agency rules, NPRM's and notices are published in the daily Federal Register. The text of rules is then codified annually into the Code of Federal Regulations.

3.0 INITIATING A RULEMAKING PROJECT

3.1 Introduction

This chapter describes the FHWA's procedures for how a program office initiates a rulemaking project. Topics include the following:

- Identification of the need for rulemaking;
- Justification for rulemaking and consideration of alternatives; and
- Review and approval procedures for initiating a rulemaking project.

3.2 Need for Rulemaking

Typically, a rulemaking action is started because a program office identifies the need for a rule change or for a new rule. Occurrences that commonly trigger rulemaking actions include the following:

- Findings or recommendations from official groups (for example, the National Transportation Safety Board (NTSB), a special commission, or a DOT Task Force);
- Repetitive requests for interpretation from field offices or industry;
- Congressional mandates;
- Technological and research advances;
- Changes in industry operations or practices;

- Regulatory reviews;
- Repetitive petitions for exemption;
- Court decisions;
- Executive Orders (E.O.s) and memorandums; and
- Petitions for rulemaking.

3.3 Justification of Rules and Consideration of Alternatives

After a triggering event such as those listed in Section 3.2, those involved in determining the proper course of action should maintain a questioning attitude throughout the process to ensure that a rule is justified and that the agency has adequately considered alternatives to a rulemaking. The following lists illustrate some of the questions rulemakers should ask during this process:

The Requirement for a Rule. The FHWA must ask the following types of questions to determine if there is justification for a rule:

- Is the matter within the FHWA's statutory authority?
- Does it relate to the FHWA's responsibility to preserve, improve, and expand the surface transportation system?
- Is there a clear and necessary requirement to prepare a rule?
- Is there a Congressional mandate to prepare and promulgate a rule?
- How and to what extent has the requirement been demonstrated?

- What does experience with this issue and with similar rulemakings tell us?
- What are the facts relating to this issue?
- What burdens will it impose on the persons affected?
- What burdens will it impose on all segments of society?

Development of a Solution. Once the FHWA is satisfied that there is at least preliminary justification for a rule, the FHWA must question:

- What do we know?
- What do we need to know, and how can we obtain this knowledge?
- What are the possible solutions?
- Has each option been explored?
- Is the solution proposed the most reasonable?
- Will it adequately meet the need?
- Does it go beyond that which is necessary?
- Are there reasonable and effective means to achieve the desired results other than by rulemaking?
- How will the regulated community be affected by the proposed solution and each alternative considered? How will the public be affected?

Consideration of Alternatives to Rulemaking.

If the answers to the questions above suggest that possible solutions to the problem include both rulemaking and non-rulemaking options, the program office must compare the options and select the best approach, which may include one or more options. In addition, the program office should study the available information, consult with appropriate technical experts, reconsider the problem if necessary, and reconsider the history of the problem. Next the program office should weigh the legal, political, operational, economic, safety, and technical considerations related to each option. The option that corrects the problem and satisfies the other considerations is the best choice. It may or may not be rulemaking. Non-rulemaking options include issuing guidance material (such as technical advisories, orders, notices, or policy memorandums), seeking legislation, voluntary compliance (e.g., industry code), exemptions, and education programs.

This analysis process is used throughout the rulemaking to reassess preliminary findings and to solve problems that emerge during development of the rule. See Sections 4.7 Other Assessments, 5.8 Economic and Other Assessments, 5.9 Informal Team Review of Final Rule, and Section 8.0 Legal And Procedural Requirements For Rulemaking. For further information on alternative rulemaking actions and documents, see Section 6.0 Supplemental or Alternative Rulemaking Actions And Related Documents.

3.4 Review and Approval Procedures for Proposed Rulemaking Projects

Once a program office has decided on the need and scope of a rulemaking project, it must submit a listing for the project to appear in the next government-wide Semi-Annual Regulatory Agenda, which summarizes each proposed and final regulation under consideration during the succeeding 12 months or such longer period as may be anticipated. The HCC Legislation and Regulations Division is responsible for preparing FHWA's Semi-Annual Regulations Agenda and Annual Regulatory Program. The rulemaking team is responsible for providing HCC with the necessary information for updates to the listing in the Semi-Annual Regulatory Agenda.

The information required for the listing in the Semi-Annual Regulatory Agenda will be easily accessible to the program office and, later, the rulemaking team, if it has made the appropriate preliminary determinations about the rulemaking project described in Sections 3.2 and 3.3. In addition, to prepare the listing, the program office should determine whether the rule will:

- Be significant (Unfunded Mandates Reform Act of 1995 (UMRA), E.O. 12866, DOT

Order 2100.5);

- Have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act (RFA), Small Business Regulatory Enforcement Fairness Act (SBREFA));
- Require an information collection request (Paperwork Reduction Act); and
- Have environmental impacts (National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA)).

Early consideration of these issues and an early start on the required analyses is important to timely and efficient development of a sound proposed rulemaking package.

4.0 PREPARING AND ISSUING A NOTICE OF PROPOSED RULEMAKING

4.1 Introduction

This section describes the procedures for drafting and issuing an NPRM. Topics include the following:

- The draft, review, and concurrence process for the NPRM, the economic evaluation, and other required assessments (see Sections 4.2 - 4.10);
- OST and OMB review, if required (see Section 4.11); and
- Issuance and publication of the NPRM (see Sections 4.12 - 4.13).

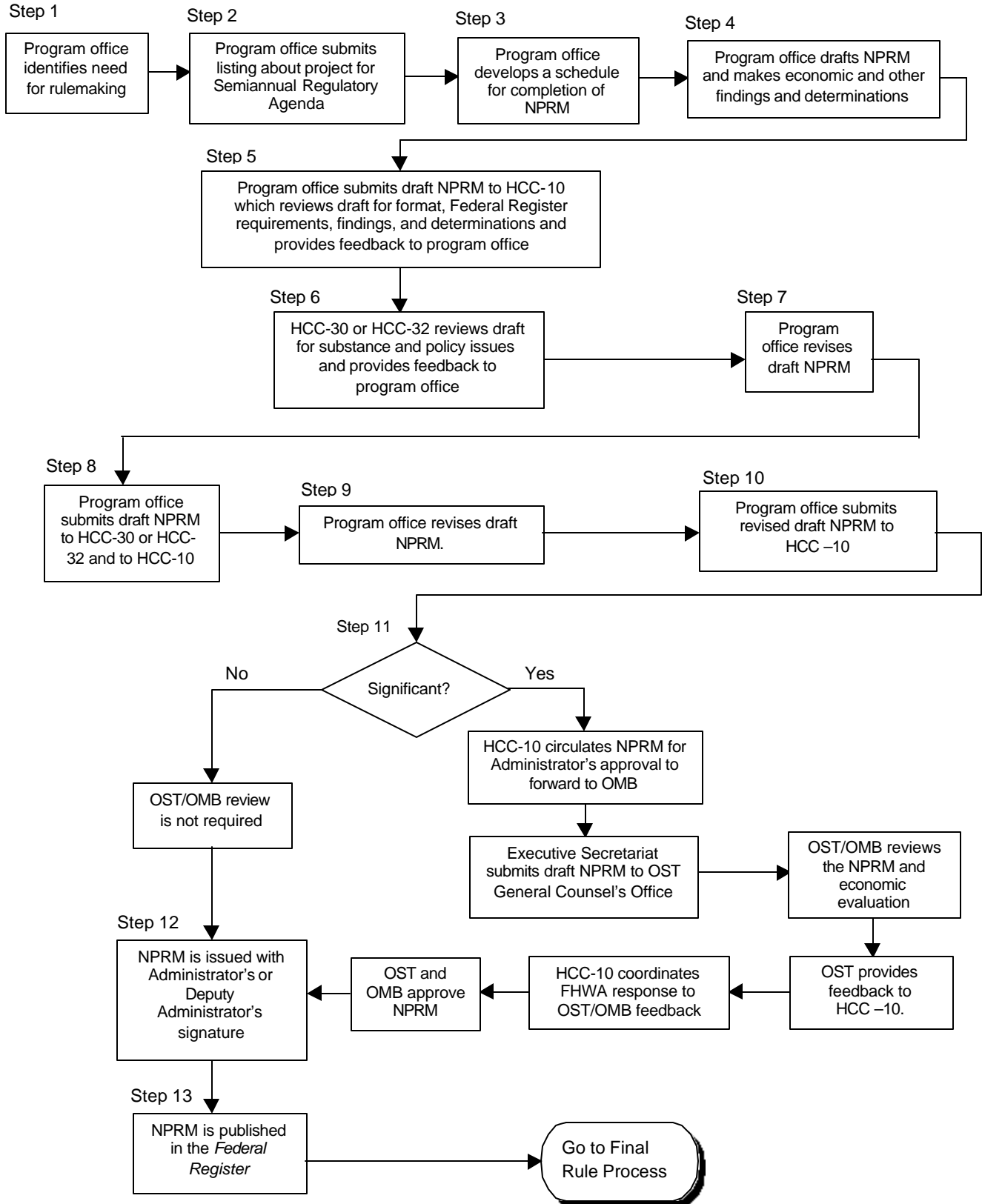
An NPRM is an announcement to the public, including State and local governments, that an amendment to either title 23, Highways, or title 49, Transportation, of the CFR is being considered. It gives the public an opportunity to comment on proposed regulations. The NPRM represents the stage in rulemaking where proposed policies, requirements, standards, etc., are being considered by the agency.

Preparation and issuance of other rulemaking and related documents, such as ANPRMs and SNPRMs, are discussed in Section 6.0.

4.2 Overview of the NPRM Process

The following flowchart illustrates the NPRM process. The accompanying text corresponds to each step in that process.

NPRM Process



Process steps for FHWA Rulemakings

NPRM Process

- Step 1 Program office identifies the need for rulemaking.
- Step 2 Program office makes a preliminary determination of significance and submits listing about project for Semiannual Regulatory Agenda.
- Step 3 Program office develops a schedule for completion of the NPRM.
- Step 4 Program office drafts the NPRM and makes economic and other findings and determinations. If a Paperwork Reduction Act requirement is involved, an information collection package is prepared and submitted to HAIM-10.
- Step 5 Program office submits draft NPRM to HCC Legislation and Regulations (HCC-10), which reviews draft for format, Federal Register requirements, findings, and determinations and provides feedback to program office. HCC-10 logs document into RINTrack.
- Step 6 HCC Program Legal Services (HCC-30) or HCC Administrative Law and Technology Division (HC-32) reviews draft for substance and policy issues and provides feedback to program office.
- Step 7 Program office revises draft NPRM according to changes recommended by HCC-10 and HCC-30 or HCC-32.
- Step 8 Program office submits draft NPRM to HCC-30 or HCC-32 and to HCC-10. HCC-10 and HCC-30 or HCC-32 review NPRM concurrently.
- Step 9 Program office revises draft NPRM according to changes recommended by HCC-10 and HCC-30 or HCC-32.
- Step 10 Program office resubmits revised draft NPRM to HCC-10. HCC-10 puts a

signature package together to obtain the necessary signatures.

Step 11 Is this a significant proposed rule?

Yes,

- a. HCC-10 circulates NPRM for Administrator's signature on a grid sheet. The Administrator must approve the NPRM before it is submitted to OST.
- b. The Executive Secretariat forwards draft NPRM to OST General Counsel's Office after the Administrator approves. The Secretary must approve the NPRM before it goes to OMB.
- c. OST/OMB reviews the NPRM and economic evaluation. OMB provides feedback to OST.
- d. OST provides feedback to HCC-10. OST may also provide feedback to HAIM-10 on Paperwork Reduction Act issues.
- e. HCC-10 coordinates FHWA response to OST/OMB feedback. The program office makes requested changes to NPRM. HCC-10 and HCC-30 or HCC-32 review the revised NPRM. HCC-10 resubmits the revised NPRM to OST/OMB.
- f. OST informs HCC-10 that OMB has concurred in publication of the NPRM.

No, proceed to Step 12.

Step 12 The NPRM is issued with the Administrator's or Deputy Administrator's signature. The Executive Director can also sign in their absence. HCC-10 transmits the signed document to OFR with the necessary form letters.

Step 13 The NPRM is published in the Federal Register.

4.3 Formation of the Rulemaking Team

As discussed in Section 3.2 Need for Rulemaking, a program office identifies the need for a rule change or for a new rule. At the beginning of the rulemaking project a rulemaking team is assigned. At a minimum the team consists of the program office specialist assigned to the project and one attorney from each of the HCC divisions responsible for rulemaking. Other individuals may be assigned to the team, depending on the project, including: representatives from other program offices that have an interest or related responsibility, an economist, statistician, etc. The program office specialist will be the Team Leader for the project.

During the rulemaking process the Team Leader is responsible for the following:

- Recording Major Issues. Keep a timely record of the major issues that arise during the NPRM process and the resolution of those issues.
- Rulemaking Project Folder. Create an electronic folder for all documents associated with the rulemaking project. When creating the project folder as well as the rulemaking documents, the Team Leader should give the rulemaking team members access to the folder and the documents. The folder should include meeting minutes, lists of alternative actions considered, the original milestone schedule and any amendments to it, the drafts of the NPRM, documents related to the required analyses, and other related documents.

4.4 Milestones Schedule

The team leader must create a milestone schedule for the rulemaking project after consultation with HCC-10 and HCC-30 or HCC-32. The schedule should be provided to HCC-10 for inclusion in the RINTrack system. The milestones for a particular project are approved by the program office and maintained by the team leader. The milestone schedule is used by rulemaking team and management to track the progress of rulemaking projects.

Possible NPRM milestones are as follows:

- Initial draft of NPRM

- Initial draft of economic evaluation and other required assessments for NPRM
- Submission of draft to HCC-30 (Program Legal Services Division) or HCC-32 (Administrative and Technology Legal Services Division)
- Submission of draft to HCC-10 (Legislation and Regulations Division)
- Administrator's (HOA-1) approval of NPRM
- NPRM transmittal to OST
- OST approval of NPRM
- NPRM transmittal to OMB
- OMB approval of NPRM
- Paperwork Reduction Act package transmittal to OMB through OST
- Issuance of NPRM
- Publication of NPRM
- Close of comment period of NPRM
- Issuance of final rule (General goal at this point).

Not all milestones may be needed for a particular project. Specific milestones for the final rule will be decided after the NPRM is published (see Section 5.6 Milestones Schedule).

4.5 The Notice of Proposed Rulemaking

General Information. An NPRM is a formal notice to the public that the agency is considering a specific regulatory change. The NPRM is published in the Federal Register to give notice to the public of a proposed new or revised regulation and provide an opportunity for the public to comment on the proposed rule. For a discussion of the notice requirements of the APA, see Section 8.2 Legislation. The NPRM describes the rule changes being considered and tells the public how it may participate in the rulemaking process. In most cases, the public is invited to participate by submitting written comments to the agency within the comment period.

If the agency plans to hold a public meeting, the time and place of the meeting may be announced in the NPRM. If a public meeting becomes necessary after the NPRM is published, the program office will prepare a notice of public meeting announcing the meeting date and forward the notice to HCC for submission to the OFR for publication.

For more information on holding and announcing a public meeting see Section 7.5 Public Meetings.

Some sections of the NPRM contain standard language used in all FHWA NPRMs, such as the invitation to submit comments. Major sections of the NPRM, however, will be based on information specific to that rulemaking. The rulemaking team leader drafts the NPRM with help from other team members.

The NPRM must be drafted in plain language. Generally, a regulation drafted in plain language uses descriptive topic headings and short sentences, avoids unnecessary words, uses lists and tables when possible, and uses the active voice. For further information on using plain language, see the home page of the Plain Language Action Network at <http://www.plainlanguage.gov>.

The NPRM also must meet the OFR's requirements for publication. More detailed information regarding the elements of an NPRM may be found in Chapter I of the "Federal Register Document Drafting Handbook."

The NPRM Template. The NPRM template at the end of this section is annotated with guidance for completing each section of the document. The version in this manual, however, may not reflect the most recent changes in boilerplate; thus, the current electronic template from HCC-10 should be obtained. Examples of recently published FHWA NPRMs can be found at the Federal Register Online via GPO Access: http://www.access.gpo.gov/su_docs/aces/aces140.html.

For instructions on format and style, including page layout, abbreviations, and references, see Sections 1.18 through 1.20 of the "Federal Register Document Drafting Handbook."

4.6 Economic Assessments

The program office is responsible for the regulatory evaluation or analysis, regulatory flexibility analysis, and unfunded mandates reform analysis. The draft NPRM includes the unfunded mandates reform analysis and summaries of the regulatory evaluation or analysis and regulatory flexibility analysis.

The following material describes the economic assessments. For more information regarding DOT and Executive Orders and legislation cited below and for a discussion of the term "significant" see Section 8.0 Legal And Procedural Requirements For Rulemaking.

Regulatory Analysis. The regulatory analysis should follow the requirements set forth in DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations (May 22, 1980) and Executive Order (E.O.) 12866, Regulatory Planning and Review.

DOT Order 2100.5, requires a regulatory analysis for all proposed regulations that are significant. DOT Order 2100.5 defines a significant regulation as a regulation that is not an emergency regulation and that in the judgment of the DOT Secretary, DOT Deputy Secretary, or FHWA Administrator--

- Will result in an annual effect on the economy of \$100 million or more;
- Will result in a major effect on the general economy in terms of costs, consumer prices, or production;
- Will result in a major increase in costs or prices for individual industries, levels of government, or geographic regions;
- Will have a substantial impact on the U.S. balance of trade;

- Concerns a matter on which there is substantial public interest or controversy;
- Has a major impact on another operating administration, other parts of the DOT, or another Federal agency;
- Has a substantial effect on State and local governments;
- Has a substantial impact on a major transportation safety problem;
- Initiates a substantial regulatory program or change in policy;
- Is substantially different from international requirements or standards; or
- Otherwise involves important DOT policy.

DOT Order 2100.5 specifies that each regulatory analysis contain--

- A succinct statement of the problem and the issues that make the regulation significant;
- A description of the major alternative ways of dealing with the problem that were considered;
- An analysis of the economic and any other relevant consequences of each of these alternatives; and
- A detailed explanation of the reasons for choosing one alternative over the others.

E.O. 12866 defines a regulatory action as significant if the action may--

- Have an annual effect on the economy of \$100 million or more or adversely effect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of the E.O.

E.O. 12866 specifies that each regulatory analysis contain--

- A costs and benefits analysis, and
- An analysis of the potentially effective and reasonably feasible alternatives of the proposed regulation.

Regulatory Evaluation. DOT Order 2100.5 requires a regulatory evaluation for each proposed rule that does not require a regulatory analysis. The evaluation includes an evaluation of the proposed regulation, quantifying, to the extent practicable, its estimated cost to the private sector, consumers, and Federal, State, and local governments, and its anticipated benefits and impacts. If the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation.

Regulatory Flexibility Analysis. The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires the FHWA to consider the special needs and concerns of small entities. The FHWA is required to prepare and publish an initial regulatory flexibility analysis describing the effect of a proposed rule on small entities for those proposed regulations that would have a significant economic impact on a substantial number of small entities. Where appropriate, the FHWA must consider alternatives that would achieve its goals while minimizing the burden on small entities. The Regulatory Flexibility Act, however, does not mandate any particular outcome. If the FHWA determines that the proposed regulation would not have a significant economic impact, a factual basis for the determination must be provided. A final regulatory flexibility analysis, which contains an explanation of why any significant alternatives were not adopted, is issued when the final rule is issued. For more information on The Regulatory Flexibility Act see Section 8.2.7 Regulatory Flexibility Act.

Unfunded Mandates Reform Act Analysis. The Unfunded Mandates Reform Act of 1995 requires the FHWA to assess the effect of Federal regulatory actions on State, local, and tribal governments and the private sector (other than to the extent that such regulations incorporate provisions required by law). Before the FHWA promulgates any NPRM or final rule that includes a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year, the FHWA must prepare a statement that contains, in general, the following:

- The authority under which the proposed rule or rule is being promulgated;
- The Costs and benefits to State, local, and tribal governments;
- The effect of the action on the national economy; and
- The consultation with elected representatives of the affected State, local, and tribal governments with which the FHWA has communicated in the course of the rulemaking.

For more information on The Unfunded Mandates Reform Act of 1995 see Section 8.2.9 Unfunded Mandates Reform Act of 1995.

4.7 Other Assessments

Paperwork Reduction Act. The program office is responsible for obtaining OMB approval of any new or revised reporting, recordkeeping, or disclosure requirements proposed in the NPRM. With the assistance of HAIM-10, the program office completes OMB Form 83-1 and a supporting statement for Paperwork Reduction Act submissions. HAIM-10 submits the form and the supporting statement through OST (S-80) to OMB with a copy of the NPRM at the same time the NPRM is submitted for OMB approval.

The team leader summarizes the information prepared by the program office and incorporates the summary into the NPRM before final team concurrence. For more information on the requirements of the Paperwork Reduction Act, see Section 8.2.6 Paperwork Reduction Act. The NPRM template contains sample preamble language (see Section 4.5 The Notice of Proposed Rulemaking).

Environmental Analysis. All FHWA rulemakings must comply with the requirements of NEPA (see Section 8.2 Legislation) and determine whether the rulemaking will have any effect on the quality of the environment. If it is determined that the rulemaking will have an

effect then the agency must perform an Environmental Assessment (EA) to determine whether the effect will be significant. If the FHWA concludes that the rulemaking will have a significant effect on the environment then the agency must prepare an Environmental Impact Statement (EIS). As soon as a decision has been reached to prepare an EIS, the FHWA division office should prepare a Notice of Intent. This notice, which is published in the Federal Register, is simply an announcement to let the public know that the project is being developed and that an EIS will be prepared to address its environmental impacts. The Notice briefly identifies the project, its purpose and need, preliminary alternatives (if any), and what the chief environmental issues should be. Guidelines for preparation of these notices are given in the FHWA Technical Advisory T6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents. For more information on preparing an environmental analysis, see Section 8.0 Legal And Procedural Requirements For Rulemaking.

4.8 Informal Team Review of the NPRM

Drafting the NPRM. The team leader submits the initial drafts of the NPRM to the other members of the rulemaking team for review. The team leader may schedule a meeting for the team to discuss the draft documents, or the team may decide to submit written comments on the documents to the team leader or to all team members. The NPRM is revised based on comments received from the rulemaking team. It may take several drafts of the NPRM before the team is satisfied with the documents. During this process, the team must consider how other regulations may be affected by the changes proposed in the NPRM and ensure that all cross-references to the revised regulations are correct.

Management Briefings. Team members should brief their management to obtain management views and comments on the documents during the drafting process. These briefings may be formal or informal depending on the procedures within each team member's particular area. OST should be included in these briefings when appropriate. In addition, team members should bring any major new issues to management's attention and obtain support for the approach taken by the team to address the issues.

By involving management during team member preparation of the NPRM, problems can be identified and appropriate solutions can be developed early in the NPRM process. Therefore, few unexpected issues should arise during the review and concurrence process.

4.9 Summary Sheet

When the draft NPRM is ready for coordination, HCC-10 prepares a summary sheet. The summary sheet is a short synopsis of the NPRM. Most of the information needed to complete the summary sheet is found in the NPRM. The summary sheet aids management in the review process, although management should be familiar with the issues in the project through briefings from team members during the drafting process.

The template for the summary sheet at the end of this section is annotated with guidance for completing each section. An electronic version (available from HCC-10) should always be used because it will contain the most current format. For very simple NPRMs, a short briefing memorandum without headings, but containing the essential substance, can be used.

4.10 Formal Coordination Process

General. Unless review and concurrence authority has been delegated, the coordination process generally proceeds as follows:

1. Program office concurrence, which includes concurrence through the CBU Program Manager level;
2. HCC-30 (the Program Legal Services Division) or HCC-32 (Administrative and Technology Legal Services Division) concurrence;
3. HCC-10 (the Legislation and Regulations Division) concurrence;
4. Submission by Chief Counsel to Administrator; and
5. HOA-1 (the Administrator) approval.

This process generally will involve sequential review and concurrence by these entities; however, when appropriate, the documents may be reviewed simultaneously.

The "60-day" List. Every month HCC-10 prepares a list of the rulemaking documents that will be ready for issuance, or, if significant, for submission to OST, within the next 60 days. HCC-10 forwards this list to OST. OST and OMB approve or disapprove FHWA's designation of significance. If the document is not issued or submitted to OST in that 60-day period, the rulemaking document will continue to appear on successive 60-day lists until issued or submitted to OST.

The Coordination Package. The coordination packages include the following items:

- Summary Sheet;
- NPRM;
- First page of the Summary Sheet with a grid for routing and concurrence; and
- Other relevant background information (for example, reports cited in the NPRM, petitions requesting the rulemaking).

4.11 OST/OMB Review

Nonsignificant Proposed Rules. If the NPRM is nonsignificant, OST/OMB review is not required. See Section 8.4.2 DOT Order 2100.5, Policies & Procedures for Simplification, Analysis, & Review of Regulations.

Significant Proposed Rules. If the NPRM is significant, OST and OMB review the NPRM sequentially.

OST Review and Approval Process:

1. HCC-10 forwards the NPRM to the Assistant General Counsel for Regulations and Enforcement, C-50, for OST review after Administrator approval.
2. If OST expresses any concerns or comments, they communicate them directly to HCC-10. These comments are given to the HCC-30 or HCC-32 rulemaking team member and to the team leader.
3. If the program office and appropriate management concur, the rulemaking team revises the NPRM based on OST's comments.
4. The team leader forwards the revised document to HCC-10 who forwards it to OST.
5. HCC-10 informs the program office once OST approves the documents.

OMB Review and Approval Process.

1. After OST approval, OST forwards the NPRM to OMB for review.
2. If OMB expresses any concerns or comments, they communicate them directly to OST, and OST forwards them to HCC-10. These comments are given to the HCC-30 or HCC-32 rulemaking team member and to the team leader.
3. If the program office and appropriate management concur, the rulemaking team revises the NPRM based on OMB's comments, as necessary.
4. The team leader forwards the revised documents to the HCC team member, who forwards them to OST; OST forwards the revised documents to OMB.
5. After OMB approval, HCC forwards the NPRM to the team leader.

See DOT Order 2100.5 for guidelines on which documents OST must review.

4.12 Issuance of the NPRM

If the proposed rule is nonsignificant, the Administrator signs the NPRM at the time the document is reviewed and approved. If the proposed rule is significant, HCC forwards the final rule to the Administrator for signature after OST/OMB approval. If the Paperwork Reduction Act was addressed in the NPRM, the team leader notifies the Paperwork Reduction Act coordinator, HAIM-10, when the NPRM has been issued.

4.13 Establishing the Public Docket

After the NPRM has been signed, HCC-10 obtains a docket number from the DOT Transportation Administrative Service Center (TASC), which manages the Docket Management System. This number is inserted into the document before it is submitted to OFR for publication. The team leader provides any other related documents for the docket, such as an economic evaluation, to HCC-10. HCC-10 is responsible for providing TASC with a copy of the NPRM and other materials to be docketed.

4.14 Publication of the NPRM

HCC-10 submits the signed document to the OFR for publication. In addition, an electronic copy of the document on a disk in the format specified by the OFR and a standardized letter certifying that the diskette is a true copy of the original signed final rule are forwarded to the OFR. The OFR communicates with HCC about any problems

involving publication of the NPRM.

4.15 Templates

The following pages have templates for developing the NPRM and NPRM Summary Sheet.

NPRM Template

DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part [XXX] *The CFR title and part(s) the document proposes to amend.*

[FHWA Docket No.FHWA-year-] *These numbers generally are left blank. The Office of the Chief Counsel (HCC) assigns the docket before sending the document to the Office of the Federal Register (OFR). However, if a docket has been opened for the project, for example if a docket was opened for comments received before issuance of the NPRM, use the previously assigned docket number.*

RIN 2125- *If a Regulation Identification Number (RIN) has been assigned to the project it can be found in the Semiannual Regulatory Agenda. However, if a RIN has not been assigned, HCC assigns the number before the project is listed for the first time in the Semiannual Regulatory Agenda. The prefix "2125-" is used for all FHWA rulemakings.*

[Title] *Brief title describing the substance of the NPRM.*

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: *A brief statement in simple language of what action is being taken, why the action is necessary, and the intended effect of the action. Because the document proposes a rulemaking action, use the conditional form of the verb. For example, use "would" rather than "will." Generally, the summary should not contain references to specific regulations, but rather a description of the nature of the regulations affected. For example, if the FHWA is proposing to amend 23 CFR 668.111, instead of citing the specific section, the summary should state that "this proposal would amend the application procedures under the Emergency Relief Program."*

DATES: Comments must be received on or before [Insert date 30/45/60/90/120 days after date of publication in the Federal Register.]

NPRM Template

A specific time period should be selected as indicated above and the OFR will insert the appropriate date calculated from the date of publication. The document team may specify a date (rather than a number of days) if sufficient time is available when the document is ready for publication; however, delay in processing may require specific dates to be revised. Generally, the comment period for FHWA proposed rules is 90 days; however, the time period may be shorter or longer depending on the circumstances. This section also may include other relevant dates such as a public meeting date. However, place any discussion of, for example, the meeting agenda, in the Supplementary Information section.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: [Name of person most knowledgeable about the technical contents of the document, i.e., the team leader, [Office], [Routing Symbol], [Phone Number], or [Name of attorney most knowledgeable about the legal aspects of the document], Office of the Chief Counsel, [Phone number], 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.

NPRM Template

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also 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.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background *Statement of the problem the proposal attempts to resolve, the history of the problem including safety considerations and technological changes, the current requirements and why they do not adequately address the problem, reference material such as reports used as a basis in drafting the proposal, and related activity that also may be pending. This section should state why the approach to the problem is being proposed (that is, the "justification" or "rationale" for the proposed rule). Each alternative considered should be discussed, giving the reason for rejecting it. The following headings should be used when appropriate.*

Statement of the Problem. *Summary of problem that the proposed rule is attempting to resolve. Preferably not longer than one double-spaced page.*

NPRM Template

History. *How we got where we are today; for example, safety considerations, technological changes, relevant legislation, and past rulemakings.*

Reference Material. *Discuss each report, study, research evaluation, or any other document used as a basis for the proposal. Generally, each report cited in the NPRM must be available to the public. If a report was relied on in deciding to issue the NPRM, a copy of that report must be placed in the docket. However, if a report contains proprietary or privacy information, that information should be withheld from the docket. A copy of the remainder of the report, if reasonably separated, should be included in the docket. HCC-10 is responsible for transmitting the necessary documents to DOT TASC for inclusion in the docket.*

Related Activity. *Other related actions pending.*

Current Requirements. *If appropriate, current requirements.*

General Discussion of the Proposals *A technical evaluation of the problem, how the proposal would address the problem, and alternatives considered. If the document proposes to amend several regulations, this section may be divided into a general discussion and a section-by-section analysis of the proposals.*

Section-by-Section Discussion of the Proposals *The section-by-section analysis should address each CFR section to be amended, in numerical order, identified by the section number. If the same change is made to more than one section, those sections may be discussed together by section number or topic.*

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested

NPRM Template

persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures *This section should not restate background information because this information is found elsewhere in the document. The following introductory language should be used with the wording in the brackets selected as appropriate for the proposed rulemaking action. Subheadings such as "Benefits," "Costs," and "Benefit/Cost Comparison" may be used, as appropriate, after the introductory language.*

The FHWA has determined preliminarily that this action [would/would not] be a significant regulatory action within the meaning of Executive Order 12866 or [would/would not] be significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be [minimal / significant]. *[Explain why the action would/would not be significant and why the economic impact would be minimal or significant. If the action is determined to be insignificant and have minimal economic impact, add the following:]*

These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

NPRM Template

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action [would/would not] have a significant economic impact on a substantial number of small entities.

[Insert explanation of the regulatory flexibility finding. If the finding is that there would not be an impact insert the following after the explanation]: For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule [would/would 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 proposed rule [will/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 (2 U.S.C. 1532). *[Insert explanation of the unfunded mandates finding, i.e. how did you make the determination? If the proposed rule will impose unfunded mandates, the FHWA should include the following statement]:* Therefore, the FHWA has prepared a separate written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. A copy of the FHWA's Regulatory Accountability and Reform Analyses is included in the docket.

NPRM Template

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action [would/would not] have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that this proposed action [would/would 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 [Insert number], [Insert Program Name]. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities [apply/do not apply] to this program. *If applicable, insert the following:* Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), 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 FHWA has determined that this proposal [contains/does not contain] collection of information requirements for the purposes of the

NPRM Template

PRA.

(If applicable, insert discussion of the information collection requirements, including any already approved OMB number(s) and expiration date(s), burden hour estimates and the following paragraph. If there could be a question as to the applicability of the PRA, include brief reasoning as to why it does NOT apply.)

The FHWA is required to submit [this/these] proposed collection(s) of information to OMB for review and approval and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act *When an action is not categorically excluded, an environmental assessment (EA) must be prepared to determine whether a finding of no significant impact (FONSI) or an environmental impact statement (EIS) should be prepared for the action. The preamble should summarize the agency findings. For rulemaking projects, FONSI and EISs are placed in the docket for public review. If an action is categorically excluded, use language similar to the following.*

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

NPRM Template

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 [XXX] *A list of the index terms for each part of 23 CFR cited in the heading of the NPRM. The terms are common words used to index the regulations of all agencies. The "List of Subjects," which provides the terms for each part contained in the Federal Register Thesaurus of Indexing Terms, is available from the Office of the Federal Register (OFR) or at <http://www.nara.gov/fedreg/nfthes.html>. Always use the index terms found in the Federal Register Thesaurus for each part involved. The index terms must appear in alphabetical order separated by commas, with the first letter of each term capitalized. If two or more parts are affected by the proposal the following format must be used:*

List of Subjects *List the parts in numerical order.*

23 CFR Part [XXX]

Insert appropriate index terms.

23 CFR Part [XXX]

Insert appropriate index terms.

Issued on: [Insert date]

NPRM Template

The date of issuance is the signature date.

[Name of Federal Highway Administrator]

Federal Highway Administrator

In consideration of the foregoing, the FHWA proposes to amend, title 23, Code of Federal Regulations, part [XXX], as set forth below:

PART [XXX]--[TITLE] *The title must be in all caps, and if the title requires more than one line, the second and any succeeding line are flush with the left margin directly under the "P" in "Part."*

1. The authority citation for part [XXX] [continues/is revised] to read as follows: *The authority citations appear after the title of each amended part and are periodically updated by HCC.*

Authority: 23 U.S.C.[XXXXXX, XXXXX, XXXXX.]

2. Amend § [XXX.XXX] to ... : *The OFR requires the use of specific amendatory language (for example, amended, added, removed, revised, and corrected) and the FHWA is not permitted to add to the list. For a description of the available amendatory terms and their proper use, see Section 1.13 of the Federal Register Document Drafting Handbook.*

§ [XX.XXX Title].

All paragraphs must be indented 5 spaces from the left margin. Do not use any further indentations.

(a) XXXXXXX

NPRM Template

(b) XXXXXX

(1) XXXXXX

(i) XXXXX

* * * * *

See Section 1.14 of the Federal Register Document Drafting Handbook for the proper use of asterisks.

PART [XXX]--[TITLE]

3. The authority citation for part [XXX] [continues/is revised] to read as follows: *Continue numbering the individual proposals sequentially. Do not begin each new part with the number "1. "*

Authority: 23 U.S.C. [XXXXXX, XXXXX, XXXXX].

4. Amend § [XXX.XXX] to ... :

§ [XX.XXX Title].

Start indented paragraph here...

(a) XXXXXXX

(b) XXXXXX

(1) XXXXXX

NPRM Template

(i) Xxxxx

Summary Sheet Template

SUBJECT: *[Title of the NPRM; Type of rulemaking document.]*

FROM: Chief Counsel

TO: HOA-1, Administrator

Attached for your review and signature is a draft notice in which the FHWA proposes ... *[Insert a brief description of the action using phrasing that would help reviewers recognize the subject matter of the NPRM. Since this is an internal document, agency terminology that you would not use in the Federal Register is acceptable.]* If you agree that this notice should be published, please sign the three attached copies and return them to this office (HCC-10) for submission to the Office of the Federal Register.

Significant/Nonsignificant Determination: *[The draft document contains the FHWA's determination as to whether the rule is significant or nonsignificant. The determination will be confirmed officially by OST and OMB in approving the Semiannual Regulatory Agenda and confirmed later in approving the "60-day list" before the NPRM is expected to be issued (if nonsignificant) or sent to OST (if significant).]*

ISSUE: *[Include information management may need to know concerning the rulemaking action. For example, state the expected reactions of the major constituencies (for example, State governments, environmental groups). Discuss any issues that may generate an unusual amount of interest from other government entities or the public. Include costs under issue, if relevant. Indicate if the NPRM contains no controversial issues.]*

FHWA POSITION: *[Explain the policy decisions contained in the NPRM. Summarize how FHWA resolved the issues described above.]*

BACKGROUND: *[State the reasons for the proposed rule changes. Any background information on the issues or previous rulemakings should be included.]*

CONTACT: *[Insert name, office designation, and phone number for the program office contact.]*

SUPERVISOR: *[Insert name, office designation, and phone number for the supervisor of the program office contact.]*

Signature

Chief Counsel

5.0 PREPARING AND ISSUING A FINAL RULE

5.1 Introduction

This section describes the procedures for drafting and issuing a final rule, including analysis of the comments and completion of the final economic evaluation and other required analyses. Topics discussed in this section include the following:

- Submission and consideration of comments on the NPRM (see Sections 5.3-5.4);
- Rulemaking team draft, review, and concurrence of the final rule and the economic and other assessments (see Section 5.2 and Sections 5.5-5.9);
- Management review and concurrence (see Section 5.10);
- OST and OMB review, if required (see Section 5.11); and
- Issuance and publication of the final rule (see Sections 5.12-5.13).

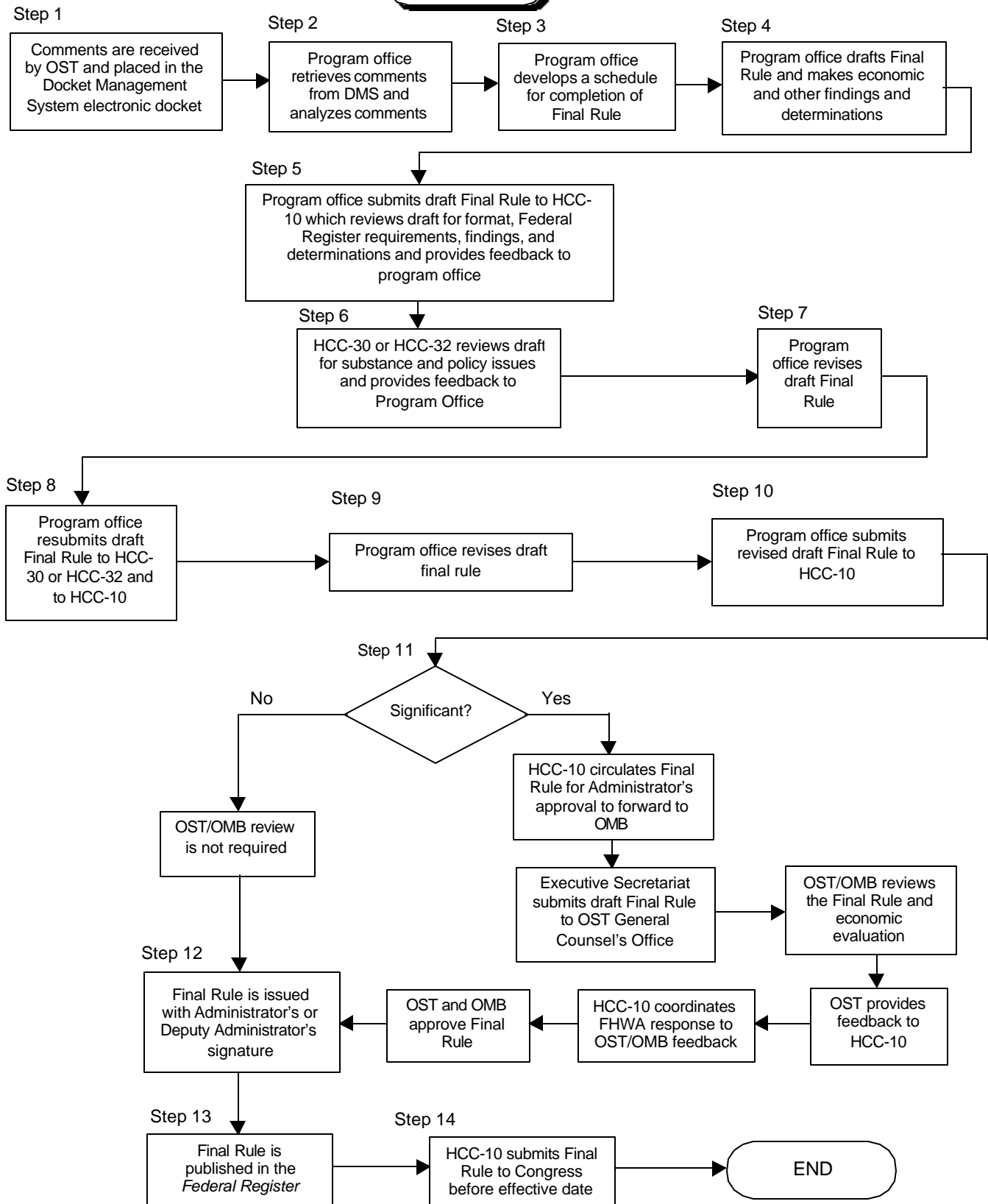
A final regulation (rule) announces to the public and State and local governments that either title 23 or title 49 of the CFR is amended.

Preparation and issuance of other rulemaking and related documents, such as interim final rules, are discussed in Section 6.0 Supplemental or Alternative Rulemaking Actions And Related Documents.

5.2 Overview of the Final Rule Process

The following flowchart illustrates the final rule process. The accompanying text corresponds to each step in that process.

Final Rule Process



Process for FHWA Rulemakings

Final Rule Process

- Step 1 Comments are received by OST and placed in the Docket Management System (DMS) electronic docket.
- Step 2 Program Office retrieves the comments from DMS and analyzes the comments.
- Step 3 Program Office develops a schedule for completion of the Final Rule.
- Step 4 Program office drafts the Final Rule and makes economic and other findings and determinations. If Paperwork Reduction Act requirements have changed since publication of the NPRM, prepare revised information collection package and coordinate with HAIM-10.
- Step 5 Program office submits draft Final Rule to HCC Legislation and Regulations (HCC-10), which reviews draft for format, Federal Register requirements, findings, and determinations and provides feedback to program office.
- Step 6 HCC Program Legal Services (HCC-30) or HCC Administrative Law and Technology Division (HC-32) reviews draft for substance and policy issues and provides feedback to program office.
- Step 7 Program office revises draft Final Rule, according to changes recommended by HCC-10 and HCC-30 or HCC-32.
- Step 8 Program office resubmits draft Final Rule to HCC-30 or HCC-32 and to HCC-10. HCC-30 or HCC-32 and HCC-10 review Final Rule concurrently.
- Step 9 Program office revised draft Final Rule according to changes recommended by HCC-10 and HCC-30 or HCC-32.
- Step 10 Program office submits revised draft Final Rule to HCC-10. HCC-10 puts a signature package together to obtain the necessary signatures.

Step 11 Is this a significant Final Rule?

Yes,

- a. HCC-10 circulates Final Rule for Administrator's signature on a grid sheet. The Administrator must approve the Final Rule before it is submitted to OST.
- b. The Executive Secretariat forwards draft Final Rule to OST General Counsel's Office after the Administrator approves. The Secretary must approve the Final Rule before it goes to OMB.
- c. OST/OMB reviews the Final Rule and economic evaluation. OMB provides feedback to OST.
- d. OST provides feedback to HCC-10. OST may also provide feedback to HAIM-10 on Paperwork Reduction Act issues.
- e. HCC-10 coordinates FHWA response to OST/OMB feedback. The program office makes requested changes to Final Rule. HCC-10 and HCC-30 or HCC-32 review the revised Final Rule. HCC-10 resubmits the revised Final Rule to OST/OMB.
- f. OST informs HCC-10 that OMB has concurred in publication of the Final Rule.

No, proceed to Step 12.

Step 12 The Final Rule is issued with the Administrator's or Deputy Administrator's signature. The Executive Director can also sign in their absence. HCC-10 transmits the signed document to OFR with the necessary form letters.

Step 13 The Final Rule is published in the Federal Register.

Step 14 HCC-10 submits Final Rule to Congress before the effective date.

5.3 Comments

Submission of Comments. The public is instructed in the preamble of the NPRM to submit comments within a specified period. Comments on NPRMs issued after August 1998 are maintained electronically in the DOT Transportation Administrative Service Center (TASC) Docket Management System (DMS) with the NPRM and other related documents. If the FHWA holds public meetings, transcripts of the meetings also are included in the docket and should be considered with the written comments. Comments maintained electronically in the DMS may be downloaded from the DMS web site (<http://www.dms.dot.gov>).

Docketing of the Comments. The comments are numbered in the order in which the comment was received. The numbering system is helpful for tracking comments and ensuring comments are not lost during the analysis process. The rulemaking team uses the numbers to verify it has received a copy of all comments filed in the docket for the particular rulemaking project.

Late or Early Comments. FHWA accepts all late comments and considers them to the extent practicable. Comments received after the comment period closes still are filed in the docket. Comments received before the comment period opens and that clearly can be identified with a particular rulemaking are filed in the appropriate docket, when one has been established. They also are considered by the team in its comment analysis.

Handling Specific Categories of Comments

FHWA Employee Comments. Comments from FHWA employees who are commenting as private citizens are handled as any other public comment. FHWA employees must not use government time, government resources (including letterhead paper or e-mail), or official titles when submitting personal comments. The employee may include his or her relevant personal experience.

Official FHWA Comments. Employees who desire to submit comments on a proposed rule in their official capacity must go through their internal organization. The internal organization should address and submit its comments to the program office that initiated the rulemaking action. An official FHWA comment, submitted on FHWA stationery, is considered but is not placed in the public docket and is not addressed directly in the preamble. If a written response to an official FHWA comment is warranted, it is addressed internally.

Comments from Other Government Agencies. Comments submitted by

government entities outside the FHWA, such as the NTSB or individual states, are considered with the public comments and discussed in the preamble, as appropriate.

Comments Beyond the Scope of the Notice. Comments that do not relate to the subject matter of the proposed rule or that recommend amending rules the FHWA had not proposed to amend are considered to be beyond the scope of the notice. The rulemaking team reads and considers them but does not address them in detail in the preamble. If the team is unsure of whether or not a comment is beyond the scope of the notice, it should discuss the comment with the team member from HCC.

Changes to a Final Rule after Submission to OMB. Changes made to a Final Rule after submission to OMB must be placed in the docket. Any changes to a Final Rule made at OMB's request must be noted in the docket.

Ex Parte Contacts. An ex parte contact is a communication between the FHWA and a party outside the government related to a specific rulemaking proceeding before that proceeding closes. A rulemaking proceeding does not close until a final rule is published. For a discussion on how to handle ex parte contacts see Section 7.3 Ex Parte Contacts.

5.4 Analysis of Comments

General Information. Through analysis of the public comments, the rulemaking team--

- Identifies the issues raised in the comments, prepares a detailed outline of the issues and agrees to the disposition of each issue; and
- Determines whether changes should be made to the proposed rule or to various assessments. If the team identifies parts of the proposed rule or supporting assessments that require revision, the nature of the revision should be determined during completion of the comment analysis.

General Assessment of Comments. The rulemaking team prepares a summary of the comments received, including the total number of comments received, whether or not commenters generally support or oppose the proposal, and the major issues raised. If the FHWA received few comments on an NPRM, summarize each substantive issue raised by the commenters. However, if many comments are received, summarize the comments by

issue.

Issue. For each issue raised by the commenters, the rulemaking team should complete the following:

1. Summarize comments that agree with proposed provisions and list the reasons they agreed;
2. Describe objections raised to proposal or the changes to the proposal recommended by the commenters;
3. State why the commenters raised objections or proposed changes, if the commenters explained the reasons for their positions;
4. If applicable, explain what changes to the proposed rule will need to be made to respond to the issues raised and why the rulemaking team agrees with the commenters; and
5. If applicable, explain why the rulemaking team does not agree with the commenters. State how the rulemaking team proposes to respond to the commenters.

5.5 Recommended Rulemaking Action

After completing the comment analysis, the rulemaking team recommends a disposition of those comments, discusses any significant opposition to the proposal and recommends a rulemaking action and prepares or completes the possible final rule milestone schedule. The milestone schedule may be needed before the comment analysis is finished.

Possible rulemaking actions recommended by the team may include the following:

Final Rule. If the rulemaking team determines that it is appropriate to issue a final rule, the team proceeds with drafting the final rule. If the team determines significant changes from the NPRM are warranted (for example, a significant proposed revision should be withdrawn) but issuance of a Supplemental Notice of Proposed Rulemaking (SNPRM) is not required, then the team should discuss the changes and why they are needed and make a record of this discussion. Management may need to be briefed on these

significant changes to the final rule. The team may proceed with drafting those portions of the final rule not subject to significant revisions, while management reviews and responds to the teams recommendation for significant changes.

SNPRM. In an SNPRM, the agency proposes substantive revisions to the NPRM and requests comments on those revisions before proceeding to a final rule or raises new issues that require public comment. See Section 6.4 Supplemental Notice of Proposed Rulemaking for a discussion of SNPRMs. A recommendation to issue an SNPRM may need to be approved by upper management. The team may need to provide management a brief summary of the nature of the comments and the reasons for issuing an SNPRM, as well as a proposed milestone schedule.

Notice of Withdrawal. After a review of all comments, the team may recommend withdrawal of a proposal. For a discussion of the reasons for withdrawing a proposal, see Section 6.5 Notice of Withdrawal. If the team recommends that the NPRM should be withdrawn, then the team should prepare a record explaining the reasons for requesting withdrawal of the notice and include a proposed milestone schedule for completing the notice of withdrawal.

Other. The team should keep a record of why any recommended action is appropriate and provide a proposed milestone schedule for completion of the recommended rulemaking document.

5.6 Milestones Schedule

The team leader must create a milestone schedule for the rulemaking project after consultation with HCC-10 and HCC-30 or HCC-32. The schedule should be provided to HCC-10 for inclusion in the RINTrack system. The milestones for a particular project are approved by the program office and maintained by the team leader. The milestone schedule is used by rulemaking team and management to track the progress of rulemaking projects.

Possible final rule milestones are as follows:

- Initial draft of Final Rule
- Initial draft of economic evaluation and other required assessments for Final Rule

- Submission of draft to HCC-30 (Program Legal Services Division) or HCC-32 (Administrative and Technology Legal Services Division)
- Submission of draft to HCC-10 (Legislation and Regulations Division)
- Administrator's (HOA-1) approval of Final Rule
- Final Rule transmittal to OST
- OST approval of Final Rule
- Final Rule transmittal to OMB
- OMB approval of Final Rule
- Issuance of Final Rule
- Publication of Final Rule
- Submit Final Rule to Congress.

5.7 The Final Rule

General Information. Some sections of the final rule contain standard language. Major sections of the final rule, however, will be based on information in the comment analysis. The rulemaking team leader, with the assistance of other members of the rulemaking team, drafts the final rule.

The final rule must be drafted in plain language. Generally, a regulation drafted in plain language uses descriptive headings and short sentences, avoids unnecessary words, uses lists and tables when possible, and uses the active voice. For further information on using plain language, see the home page of the Plain Language Action Network at

<http://www.plainlanguage.gov>.

The final rule also must meet the OFR's requirements for publication. More information regarding the elements of a final rule may be found in Chapter 2 of the "Federal Register Document Drafting Handbook."

The Final Rule Template. The final rule template at the end of this section is annotated with guidance for completing each section of the document. An electronic template (available from HCC-10) should always be used to draft a final rule as it will contain the most current format and instructions for drafting a final rule.

For instructions on format and style, including page layout, abbreviations, and references, see Sections 1.18 through 1.20 of the "Federal Register Document Drafting Handbook."

5.8 Economic and Other Assessments

The program office is responsible for revising the regulatory evaluation or analysis, regulatory flexibility analysis, unfunded mandates reform analysis, and other analyses (see Section 8.0 Legal And Procedural Requirements For Rulemaking) as necessary to respond to the comments and for any revisions to the proposed rule language as adopted in the final rule. The final rule includes the unfunded mandates reform analysis and summaries of the regulatory evaluation or analysis and regulatory flexibility analysis.

Paperwork Reduction Act. If the final rule contains new or revised recordkeeping, reporting, or disclosure requirements discovered since the NPRM or, if the comments provided new information on the number of affected parties, types of impacts, etc., the program office is responsible for updating the paperwork submission and obtaining approval for the new requirements from OMB during the preparation of the final rule. See Sections 4.0 Preparing And Issuing A Notice of Proposed Rulemaking and 8.0 Legal And Procedural Requirements For Rulemaking for information on preparing the submission required for obtaining OMB approval and the requirements of the Paperwork Reduction Act. Once OMB approval has been obtained, a control number is assigned. The team leader references this number in the final rule.

Environmental Analysis. The program office is responsible for preparing any environmental document that may be required in accordance with National Environmental Policy Act during preparation of the NPRM. The team leader incorporates a summary of the findings or a statement of categorical exclusion in the final rule before final team concurrence. For more information on the requirements for preparing an environmental analysis see Section

8.2.4 National Environmental Policy Act.

5.9 Informal Team Review of Final Rule

Drafting the Final Rule. The team leader submits the initial drafts of the final rule to the other members of the rulemaking team for review. The team leader may schedule a meeting for the team to discuss the draft documents or the team may decide to submit written comments on the documents to the team leader or to all team members. The final rule is revised based on comments received from the rulemaking team. It may take several drafts of the rule before the team is satisfied with the documents. During this process, the team must consider how other regulations may be affected by any changes in the final rule and ensure that all cross-references to the revised regulations are correct.

Management Briefings. Team members should brief their management to obtain management views and comments on the documents during the drafting process. These briefings may be formal or informal depending on the procedures within each team member's particular area. OST should be included in these briefings when appropriate. In addition, team members should bring any major new issues to management's attention and obtain support for the approach taken by the team to address the issues.

By involving management during team preparation of the final rule, problems can be identified and appropriate solutions can be developed early in the drafting process. Therefore, few unexpected issues should arise during the review and concurrence process.

5.10 Summary Sheet

When the draft final rule is ready for coordination, HCC-10 prepares a summary sheet. The summary sheet is a short synopsis of the final rule. Most of the information needed to complete the summary sheet is found in the final rule. The summary sheet aids management in the review process, although management should be familiar with the issues in the project through briefings from team members during the drafting process.

The template for the summary sheet at the end of this section is annotated with guidance for completing each section. An electronic version (available from HCC-10) should always be used because it will contain the most current format. For very simple final rules, a short briefing memorandum without headings, but containing the essential substance, can be used.

5.11 Formal Coordination Process

General. Unless review and concurrence authority has been delegated, the coordination process generally proceeds as follows:

1. Program office concurrence, which includes concurrence through the CBU Program Manager level;
2. HCC-30 or HCC-32 concurrence;
3. HCC-10 concurrence;
4. Office of Chief Counsel submission to Administrator; and
5. HOA-1 approval.

This process generally will involve sequential review and concurrence by these offices, but, when appropriate, the documents may be reviewed simultaneously.

The Coordination Package. After initial team concurrence, the team leader incorporates the regulatory evaluation or analysis summary and the other formal economic assessments (see Section 5.8 Economic and Other Assessments) in the final rule and prepares the coordination packages for the review and concurrence process.

The coordination packages include the following items:

- Summary Sheet;
- Final rule;
- First page of the Summary Sheet with a grid for routing and concurrence; and

- Other relevant background information (for example, reports cited in the final rule, petitions requesting the rulemaking).

Small Business Regulatory Enforcement Fairness Act (SBREFA) Compliance Guide. The SBREFA of 1996 requires agencies to prepare and publish one or more guides explaining the actions a small entity is required to take to comply with "each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under the Regulatory Flexibility Act" (see Section 8.2.7 Regulatory Flexibility Act). The program office is responsible for providing small entity compliance guides to the public. The compliance guide can often be constructed successfully from material in the preamble to the final rule and combined with any other guidance material the agency is preparing for the rule. The compliance guide should be released to the public when the final rule is issued.

The FHWA will make compliance guides available in the following manner. The FHWA will:

- Announce in the preamble to the final rule that a compliance guide is available on the FHWA Internet web site (see bullet 3 below).
- Make the guide available as part of the FHWA's Technical Advisory system, an information system already familiar to regulated entities. The document should be titled "Technical Advisory/Small Entity Compliance Guide."
- List the guide on the page the FHWA is adding to its web site that lists all small entity compliance guides available, with links to the text of the document itself. The web site also will tell the reader how to obtain a hard copy.
- Distribute informational copies of the guides to relevant trade associations, with a recommendation that they note their availability (on the web and in hard copy from the FHWA) in their own publications.
- Disseminate to interested parties, through FHWA regional offices who directly deal with the regulated parties, information on obtaining the guide.

5.12 OST/OMB Review

Nonsignificant Rulemaking. If the final rule is nonsignificant, OST/OMB review is not required. See Section 4.11 OST/OMB Review for NPRM OST/OMB Review and Section 8.4.2 DOT Order 2100.5, Policies & Procedures for Simplification, Analysis, & Review of Regulations.

Significant Rulemaking. If the final rule is significant, OST and OMB review the final rule.

OST Review and Approval Process.

1. After Administrator approval, HCC-10 forwards the final rule to the Assistant General Counsel for Regulation and Enforcement, C-50, for OST review.
2. If OST expresses any concerns or comments, they communicate them directly to HCC-10. These comments are given to the HCC rulemaking team member, who then forwards them to the team leader.
3. If the program office and appropriate management concur, the rulemaking team revises the final rule based on OST's comments.
4. The team leader forwards the revised document to the HCC team member who forwards it to OST, through HCC-10.
5. HCC-10 informs the program office once OST approves the documents.

OMB Review and Approval Process.

1. After OST approval, OST forwards the final rule to OMB for review.
2. OMB communicates any concerns or comments to OST, and OST forwards them to HCC-10. The HCC rulemaking team member forwards comments to the team leader.
3. If the program office and appropriate management concur, the rulemaking team

revises the final rule based on OMB's comments, as necessary.

4. The team leader forwards the revised documents to the HCC team member, who forwards them to OST; OST forwards the revised documents to OMB.
5. After OMB approval, HCC-10 forwards the final rule to the team leader.

5.13 Issuance of the Final Rule

If the rule is nonsignificant, the Administrator signs the final rule at the time the document is reviewed and approved. If the rule is significant, HCC-10 forwards the final rule to the Administrator for signature after OST/OMB approval. If the Paperwork Reduction Act was not addressed in the NPRM, the team leader notifies the Paperwork Reduction Act coordinator, HAIM-10, when the final rule has been issued. In addition, the team leader is responsible for ensuring that any related documents, such as a final economic evaluation, are placed in the docket.

5.14 Publication of the Final Rule

HCC-10 submits the signed document to the OFR for publication. In addition, an electronic copy of the document on a disk in the format specified by the OFR and a standardized letter certifying that the diskette is a true copy of the original signed final rule are forwarded to the OFR. The OFR communicates with HCC-10 about any problems involving publication of the final rule.

5.15 Congressional Review

Before a rule can take effect, the FHWA must submit to Congress and to the Comptroller General a copy of the rule, the proposed effective date, and a concise general statement relating to the rule, including whether it is a major rule as defined by the SBREFA. The FHWA also must submit to the Comptroller a copy of the cost-benefit analysis of the rule. These submissions are prepared by HCC-10.

Except for a major rule, a rule will take effect as noted in the rule after submission to Congress. For a discussion of when a major rule takes effect, see Section 8.0 Legal And Procedural Requirements For Rulemaking.

5.16 Templates

The following pages have templates for developing the Final Rule and Final Rule Summary Sheet.

Final Rule Template

DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part [XXX] *The CFR title and part(s) the document amends.*

[**Docket No. FHWA – year-**] *Docket number from the NPRM.*

RIN 2125- *RIN number that appears on the NPRM.*

[**Title**] *Title of final rule. Use the same title as it appears on the NPRM.*

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: *A brief statement in simple language of what action is being taken, why the action is necessary, and the intended effect of the action. Because this document amends the regulations, all verbs describing the intended effect of the action should be in the present tense. Generally, the summary should not contain references to specific regulations, but rather a description of the nature of the regulations affected. For example, if the FHWA is amending 23 CFR 668.111, instead of citing the specific section, the summary should state that “this final rule amends the application procedures under the Emergency Relief Program.”*

EFFECTIVE DATE(S): [Insert date XX days after date of publication in the Federal Register.] *Multiple dates necessitate use of the caption "DATES." The Administrative Procedure Act (APA) § 4, 5 U.S.C. 553(d) requires publication of an amendment in the Federal Register at least 30 days before the effective date of the final rule, unless good cause, as prescribed in the APA, is found. The justification for an earlier date must be explained in the preamble.*

FOR FURTHER INFORMATION CONTACT: [Name of person most knowledgeable about the technical contents of the document, i.e., the team leader], [Office], [Routing Symbol], [Phone

Final Rule Template

Number], or [Name of attorney most knowledgeable about the legal aspects of the document], Office of the Chief Counsel, [Phone numbers], 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.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also 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.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>

Background. *Statement of the problem the final rule attempts to resolve, the history of the problem including safety considerations and technological changes, the current requirements and why they do not adequately address the problem, reference material such as reports used as*

Final Rule Template

a basis in drafting the rule, and related activity that also may be pending. This section should state why the approach to the problem is being adopted (that is, the "justification" or "rationale" for the final rule). Each alternative considered should be discussed, giving the reason for rejecting it. The final rule preamble may repeat or summarize the information in the NPRM preamble. The following headings should be used when appropriate.

Statement of the Problem. *Summary of problem the rule is attempting to resolve. Preferably not longer than one double-spaced page.*

History. *How we got where we are today; for example, safety considerations, technological changes, relevant legislation, and past rulemakings.*

Reference Material. *Discuss each report, study, research evaluation, or any other document used as a basis for the proposal. Generally, each report cited in the final rule must be available to the public. If a report was relied on in deciding to issue the final rule, a copy of that report must be placed in the docket. However, if a report contains proprietary or privacy information, that information should be withheld from the docket. A copy of the remainder of the report, if reasonably separated, should be included in the docket.*

Related Activity. *Other related actions pending.*

Discussion of Comments *Information on the NPRM including the date of publication and the Federal Register citation, date the comment period closed and the number of comments received. Summary of the comments on the NPRM and the FHWA's analysis and disposition of those comments, including whether the rule is adopted as proposed or whether any revisions to the rule were made. The organization of this section may vary depending on the number and complexity of the comments. Comments may be categorized by, for example, 23 CFR section commented on or the topics raised in the comments.*

Discussion of Dates *If necessary, this section may be used to discuss compliance dates and reporting requirements.*

Final Rule Template

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures *This section should contain a brief summary of the full regulatory evaluation or analysis being placed in the docket. It should not restate background information because this information is found elsewhere in the document. The following introductory language should be used with the wording in the brackets selected as appropriate for the rulemaking action. Subheadings such as "Benefits," "Costs," and "Benefit/Cost Comparison" may be used, as appropriate, after the introductory language.*

The FHWA has determined that this action [is/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/significant]. *[Explain why the action will/will not be significant and why the economic impact will be minimal or significant. If the action is determined to be insignificant and have minimal economic impact, add the following:]*

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 has evaluated the effects of this action on small entities and has determined that the action [will/will not] have a significant economic impact on a substantial number of small entities.

Final Rule Template

[Insert explanation of the regulatory flexibility finding. If the finding is that there will not be an impact insert the following after the explanation]: For these reasons, the FHWA

certifies 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/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/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. *[Insert explanation of the unfunded mandates finding, i.e. how did you make the determination? If the rule will impose unfunded mandates, the FHWA should include the following statement]:* Therefore, the FHWA has prepared a separate written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. A copy of the FHWA's Regulatory Accountability and Reform Analyses is included in the docket.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action [does/does not] have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action [does/does not] preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Final Rule Template

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number [Insert number], [Insert Program Name]. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities [apply/do not apply] to this program.

Paperwork Reduction Act

This action [contains/does not contain] a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. *[If the rule will contain an information requirement, insert the following]:* This information collection requirement has been previously submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act. The requirement has been approved, through [Insert date]; OMB Control No. [Insert number].

National Environmental Policy Act *When an action is not categorically excluded, an environmental assessment (EA) must be prepared to determine whether a finding of no significant impact (FONSI) or an environmental impact statement (EIS) should be prepared for the action. The preamble should summarize the agency findings. For rulemaking projects, FONSI and EISs are placed in the docket for public review. If an action is categorically excluded, use language similar to the following.*

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

Final Rule Template

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 [XXX] *A list of the index terms for each part of 23 CFR cited in the heading of the final rule. The terms are common words used to index the regulations of all agencies. The "List of Subjects," which provides the terms for each part contained in the Federal Register Thesaurus of Indexing Terms, is available from the Office of the Federal Register (OFR) or at <http://www.nara.gov/fedreg/nfthes.html>. Select appropriate terms for the document from the list of index terms found in the Federal Register Thesaurus for each part involved. The index terms must appear in alphabetical order separated by commas, with the first letter of each term capitalized. If two or more parts are affected by the rule, the following format must be used:*

List of Subjects *List the parts in numerical order.*

23 CFR Part [XXX]

Insert appropriate index terms.

Issued on: [Insert date]

The date of issuance is the date the final rule is signed.

[Name of Federal Highway Administrator]

Federal Highway Administrator

Final Rule Template

In consideration of the foregoing, the FHWA is amending title 23, part [XXX], Code of

Federal Regulations as follows:

PART [XXX] - [TITLE] *The title must be in all caps and if the title requires more than one line, the second and any succeeding line are flush with the left margin directly under the "P" in "Part."*

1. The authority citation for part [XXX] [continues/is revised] to read as follows: *The authority citations appear after the title of each amended part and are periodically updated by HCC.*

Authority: 23 U.S.C. [XXXXXX, XXXXX, XXXXX.]

2. Amend § [XXX.XXX] to ... : *The OFR requires the use of specific amendatory language (for example, amended, added, removed, revised, and corrected), and the FHWA is not permitted to add to the list. For a description of the available amendatory terms and their proper use, see Section 1.13 of the Federal Register Document Drafting Handbook.*

§ [XX.XXX Title].

All paragraphs must be indented 5 spaces from the left margin. Do not use any further indentations.

(a) XXXXXXX

(b) XXXXXX

(1) XXXXXX

(i) XXXXX

Final Rule Template

* * * * *

See Section 1.14 of the Federal Register Document Drafting Handbook for the proper use of asterisks.

PART [XXX]-[TITLE]

3. The authority citation for part [XXX] [continues/is revised] to read as follows: *Insert the appropriate authority citation for the part affected by the following amendment. Continue numbering the individual proposals sequentially. Do not begin each new part with the number "1."*

Authority: 23 U.S.C.[XXXXX, XXXXX, XXXXX].

4. Amend § [XXX.XXX] to ... :

§ [XX.XXX Title].

Start indented paragraph here...

(a) XXXXXXX

(b) XXXXX

(1) XXXXX

(i) XXXXX

Summary Sheet Template

SUBJECT: *[Title of the final rule; Type of rulemaking document.]*

FROM: Chief Counsel

TO: HOA-1, Administrator

Attached for your review and signature is a draft notice that adopts as final a proposed rule in which the FHWA proposed ... *[Insert a brief description of the action using phrasing that would help reviewers recognize the subject matter of the Final Rule. Since this is an internal document, agency terminology that you would not use in the Federal Register is acceptable.]* If you agree that this notice should be published, please sign the three attached copies and return them to this office (HCC-10) for submission to the Office of the Federal Register.

Significant/Nonsignificant Determination: *[The draft document contains the FHWA's determination as to whether the rule is significant or nonsignificant. The determination will be confirmed officially by OST and OMB in approving the Semiannual Regulatory Agenda and confirmed later in approving the "60-day list" before the final rule is expected to be issued (if nonsignificant) or sent to OST (if significant).]*

ISSUE: *[Include information management may need to know concerning the rulemaking action. For example, state the expected reactions of the major constituencies (for example, State governments, environmental groups). Discuss any issues that may generate an unusual amount of interest from other government entities or the public. Include costs under issue, if relevant. Indicate if the rule contains no controversial issues.]*

FHWA POSITION: *[Explain the policy decisions contained in the rule. Summarize how FHWA resolved the issues described above.]*

BACKGROUND: *[State the reasons for the rule changes. Any background information on the issues or previous rulemakings should be included. Provide a brief summary of the comments, including the number of comments received and how the FHWA disposed of the comments. Indicate if no comments were received.]*

CONTACT: *[Insert name, office designation, and phone number for the program office contact.]*

SUPERVISOR: *[Insert name, office designation, and phone number for the supervisor of the program office contact.]*

Signature

Chief Counsel

6.0 SUPPLEMENTAL OR ALTERNATIVE RULEMAKING ACTIONS AND RELATED DOCUMENTS

6.1 Introduction

Circumstances may require the use of rulemaking actions other than the traditional NPRM and final rule discussed in Sections 4.0 and 5.0, respectively. This section describes the appropriate use of and procedures for preparing--

- An ANPRM,
- An interim final rule,
- An SNPRM,
- A notice of withdrawal, and
- An incorporation by reference.

All of these types of documents have been invented by DOT and other agencies to handle unusual or difficult circumstances for which the traditional NPRM and final rule documents are not appropriate. To solve a particular rulemaking problem, you may need to adapt one of these types of documents to fit the circumstances.

Information on other related documents such as the Federal-Aid Policy Guide, FHWA Technical Advisories, Orders, Notices, or Policy Memorandums can be found at <http://www.fhwa.dot.gov/legsregs/elecdirs.htm>.

6.2 Advance Notice of Proposed Rulemaking

The ANPRM is primarily a predecisional and information-gathering document and is issued prior to the development of a specific proposal. It gives the public and State and local governments an opportunity to participate early in the rulemaking process.

Description. An ANPRM is issued when the agency recognizes a need for rulemaking action, but does not have sufficient information to proceed with an NPRM. Through the ANPRM, the agency solicits ideas and data from the public. The ANPRM may be used as a vehicle for obtaining public input regarding a regulatory change before the agency has done significant research or investigation on its own. The purpose of an ANPRM is to receive information that will assist the agency in developing an NPRM or determining that rulemaking is not appropriate. The reasons for issuing an ANPRM include a need to--

- Identify entities that may be affected;
- Identify unique procedures;
- Assess the issues and potential public impact; and
- Gather technical or economic data that do not exist within the FHWA.

The ANPRM must explicitly state the type of information or data the agency is seeking to obtain. The agency cannot use the ANPRM's notice and comment period as the only basis for issuing a final rule. If the agency chooses to use an ANPRM, it must subsequently issue an NPRM before issuing a final rule on that subject.

Preparation and Coordination. The procedures for preparing and coordinating an ANPRM are the same as those described for an NPRM in Section 4.0. However, an ANPRM differs slightly from an NPRM in that an ANPRM typically does not contain specific proposed rule language or discussion of economic or other assessments.

The template for an ANPRM at the end of this section is annotated with guidance for completing each section. An electronic version (available from HCC-10) should always be used because it will contain the most current format.

6.3 Interim Final Rule

Description. In certain limited circumstances, the FHWA may issue a final rule without advance notice and opportunity for public comment. These rules are referred to as "interim final," "immediately adopted," or "emergency" rules and are exceptions to normal rulemaking procedures. The omission of a notice is not strictly limited to "emergencies." In accordance with the APA § 4, 5 U.S.C. 553(b)(3)(B), a final rule without advance notice may be issued when an agency makes a specific finding that advance notice is impracticable, unnecessary, or contrary to the public interest. These are considered "good

cause" exceptions to the notice and comment requirements. See Section 8.2 Legislation for more information on good cause exceptions.

DOT policy requires that these interim final rules be accompanied by a request for comments unless such a request is unlikely to result in the receipt of useful information. The interim final rule is issued with an effective date; however, the rule may be amended through another rulemaking based on comments received. Notice and comment on such a subsequent amendment may be necessary.

If the FHWA requests comments on an interim final rule, after close of the comment period, the rulemaking team reviews the comments to determine if the rule should be amended. The team may decide to modify the published final rule based on comments received or issue a disposition of comments that responds to the comments but states the rule remains as amended. The team then drafts a final rule for publication in the Federal Register in accordance with Section 5.0 Preparing And Issuing A Final Rule.

The template for an Interim Final Rule at the end of this section is annotated with guidance for completing each section. An electronic version (available from HCC-10) should always be used because it will contain the most current format.

6.4 Supplemental Notice of Proposed Rulemaking

Description. Based on court decisions, if an agency makes significant substantive changes between the NPRM and the final rule, the public must be given an opportunity to comment on the revisions. In such a case, the FHWA issues an SNPRM and considers comments on that notice before proceeding to the final rule. See the discussion on "Scope of the Notice" in Section 8.2.1 Administrative Procedure Act.

Preparation and Coordination. The rulemaking team drafts the SNPRM in accordance with procedures for preparing and issuing an NPRM in Section 4.0. However, unlike an NPRM, the text of the preamble may include a comment analysis section. Comments leading to the issuance of the SNPRM should be discussed in that section. Comments beyond the scope of the original NPRM on other matters not related to the issuance of an SNPRM may be discussed in either the SNPRM or the final rule.

The template for an SNPRM at the end of this section is annotated with guidance for completing each section. An electronic version (available from HCC-10) should always be used because it will contain the most current format.

6.5 Notice of Withdrawal

ANPRM, NPRM, or SNPRM. After a review of all comments to an ANPRM, NPRM, or SNPRM, the rulemaking team may determine that a problem should not be addressed through rulemaking or that the proposed rule is unsuitable for promulgation as a final rule. In such a case, the team may recommend a withdrawal of the proposal. The reasons for withdrawing the proposal may include any of the following:

- A cost/benefit impact not previously realized;
- An adverse effect (e.g., on the environment) not previously recognized;
- Difficulty of implementation or enforcement not anticipated;
- A more serious burden on a substantial number of small entities than originally expected; or
- The solution to the problem would not have the effect originally intended.

Preparation and Coordination. The procedures for preparing and coordinating a notice of withdrawal are similar to those applicable to an NPRM (see Section 4.0 Preparing And Issuing A Notice of Proposed Rulemaking). The text of the notice, however, should include a response to comments, if applicable, to the extent necessary to show the FHWA's rationale for withdrawal of the proposal. Withdrawal of a notice does not preclude the FHWA from issuing another notice on the subject matter in the future or committing the agency to any future course of action. A statement to this effect must be made in every notice of withdrawal.

The template for a notice of withdrawal at the end of this section is annotated with guidance for completing each section. An electronic version (available from HCC-10) should always be used because it will contain the most current format.

6.6 Incorporation by Reference

Incorporation by reference (IBR) is a technique used by Federal agencies to include and make enforceable materials published elsewhere without republishing those materials in full text in the agencies' regulations. Most typically this technique is used by agencies to incorporate widely-used industry-developed codes such as the National Fire Protection Code. The FHWA uses IBR extensively to incorporate documents such as AASHTO

design standards into 23 CFR part 625 and to incorporate FHWA's Manual on Uniform Traffic Control Devices into 23 CFR part 655.

The Administrative Procedure Act (5 U.S.C. § 552) requires that to be legally effective an agency must obtain the approval of the Director of the Federal Register for each document it wishes to incorporate by reference. Regulations governing this approval are set out in Part 51 of Title 1 of the Code of Federal Regulations. In general, 1 CFR 51.7(b) prohibits an agency from incorporating its own publications, but there are exceptions. Since obtaining an exception from the Office of the Federal Register may take additional time, the need to incorporate FHWA documents should be identified as early as possible during a rulemaking project.

6.7 Templates

The following pages have templates for developing the ANPRM, SNPRM, Interim Final Rule and Notice of Withdrawal of Proposed Rulemaking.

ANPRM Template

DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part [XXX] *The CFR title and part(s) the document proposes to amend.*

[FHWA Docket No.FHWA-year-] *These numbers generally are left blank. The Office of the Chief Counsel (HCC) assigns the docket before sending the document to the Office of the Federal Register (OFR). However, if a docket has been opened for the project, for example if a docket was opened for comments received before issuance of the ANPRM, use the previously assigned docket number.*

RIN 2125- *If a Regulation Identification Number (RIN) has been assigned to the project it can be found in the Semiannual Regulatory Agenda. However, if a RIN has not been assigned, HCC assigns the number before the project is listed for the first time in the Semiannual Regulatory Agenda. The prefix “2125- “ is used for all FHWA rulemakings.*

[Title] *Brief title describing the substance of the ANPRM.*

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: *A brief statement in simple language of the subject of the rulemaking the agency is considering and the kinds of information needed from the public and State and local governments in order to help the FHWA determine whether to proceed with rulemaking. The kinds of input sought by the FHWA include general comments and ideas, technical or economic data, specific procedures, and entities that would be affected if rulemaking were to proceed.*

DATES: Comments must be received on or before [Insert date 30/45/60/90/120 days after date of publication in the Federal Register.]

ANPRM Template

A specific time period should be selected as indicated above and the OFR will insert the appropriate date calculated from the date of publication. The document team may specify a date (rather than a number of days) if sufficient time is available when the document is ready for publication; however, delay in processing may require specific dates to be revised. Generally, the comment period for FHWA ANPRMs is 90 days; however, the time period may be shorter or longer depending on the circumstances. This section also may include other relevant dates such as a public meeting date. However, discussion of specifics, such as the meeting agenda, should be placed in the Supplementary Information section.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: [Name of person most knowledgeable about the technical contents of the document, i.e., the team leader, [Office], [Routing Symbol], [Phone Number] or [Name of attorney most knowledgeable about the legal aspects of the document], Office of the Chief Counsel, [Routing Symbol], [Phone number], 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.

ANPRM Template

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also 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.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background *Statement of the problem that the FHWA is seeking to resolve through possible future rulemaking. This would include a brief history of the problem including safety considerations and technological changes, the current requirements and why they may not adequately address the problem, relevant reference material, and related activity that also may be pending.*

The following headings should be used when appropriate.

Statement of the Problem. *Summary of problem that the potential proposed rule would resolve. Preferably not longer than one double-spaced page.*

ANPRM Template

History. *How we got where we are today; for example, safety considerations, technological changes, relevant legislation, and past rulemakings.*

Reference Material. *Discuss each report, study, research evaluation, or any other document used as a basis for the proposal. Generally, each report cited in the ANPRM must be available to the public. If a report was relied on in deciding to issue the ANPRM, a copy of that report must be placed in the docket. However, if a report contains proprietary or privacy information, that information should be withheld from the docket. A copy of the remainder of the report, if reasonably separated, should be included in the docket. HCC-10 is responsible for transmitting the necessary documents to DOT TASC for inclusion in the docket.*

Related Activity. *Other related actions pending.*

Current Requirements. *If appropriate, current requirements.*

General Discussion of the Proposals *A technical evaluation of the problem, how the future NPRM would address the problem, and alternatives being considered. If a future NPRM would amend several regulations, this section may be divided into a general discussion and a section-by-section analysis of the future proposals. This section also includes specific issue areas and questions on which the FHWA seeks public comment. Alternatives under consideration should be discussed, giving the pros and cons of each one.*

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. An NPRM may be issued at any time after close of the comment period.

ANPRM Template

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures *This section should not restate background information because this information is found elsewhere in the document. The following introductory language should be used with the wording in the brackets selected as appropriate for the proposed action. Subheadings such as "Benefits," "Costs," and "Benefit/Cost Comparison" may be used, as appropriate, after the introductory language.*

The FHWA has determined preliminarily that the contemplated rule [would/would not] be a significant regulatory action within the meaning of Executive Order 12866 or [would/would not] be significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this action would be [minimal / significant]. *[Explain why the action would/would not be significant and why the economic impact would be minimal or significant. If the action is determined to be insignificant and have minimal economic impact, add the following]:*

Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Based upon the information received in response to this ANPRM, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

ANPRM Template

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), and based upon the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. If the rulemaking action contemplated in this ANPRM is promulgated, it is anticipated that the proposed action [would/would not] have a significant economic impact on a substantial number of small entities. *[Insert reasons for this determination.]* The FHWA encourages commenters to evaluate any options addressed here with regard to the potential for impact, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

The actions being considered under this ANPRM [would/would not] impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). The actions being considered under this ANPRM [would/would 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 (2 U.S.C. 1532). *[Insert explanation of the unfunded mandates finding, i.e. how did you make the determination? If the ANPRM will impose unfunded mandates, the FHWA should include the following statement]:* Therefore, the FHWA has prepared a separate written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. A copy of the FHWA's Regulatory Accountability and Reform Analyses is included in the docket. Further, in compliance with the Unfunded Mandates Reform Act of 1995, the

ANPRM Template

FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

Executive Order 13132 (Federalism Assessment)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA anticipates that any action contemplated [will/will not] have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA also anticipates that any action taken [will/will not] preempt any State law or State regulation or affect the States= ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number [Insert number], [Insert Program Name]. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities [apply/do not apply] to this program. *If applicable, insert the following:* Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

Any action that might be contemplated in subsequent phases of this proceeding [is/is not] likely

ANPRM Template

to involve a collection of information requirement for the purpose of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. The FHWA, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act.

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), 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 FHWA has determined that any proposal based on this ANPRM [would/would not] contain collection of information requirements for the purposes of the PRA.

(If applicable, insert discussion of the information collection requirements, including any already approved OMB number(s) and expiration date(s), burden hour estimates and the following paragraph. If there could be a question as to the applicability of the PRA, include brief reasoning as to why it does NOT apply.)

The FHWA would be required to submit any proposed collection(s) of information to OMB for review and approval at the time the NPRM is issued and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) whether the collection of information would be necessary for the performance of the functions of the FHWA, including whether the information would have practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

ANPRM Template

National Environmental Policy Act *When an action is not categorically excluded, an environmental assessment (EA) must be prepared to determine whether a finding of no significant impact (FONSI) or an environmental impact statement (EIS) should be prepared for the action. For rulemaking projects, FONSI and EISs are placed in the docket for public review. If an action is categorically excluded, use language similar to the following.*

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) to assess whether there would be any effect on the quality of the environment.

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 [XXX] *A list of the index terms for each part of 23 CFR cited in the heading of the ANPRM. The terms are common words used to index the regulations of all agencies. A "List of Subjects," which provides the terms for each part contained in the Federal Register Thesaurus of Indexing Terms, is available from the Office of the Federal Register (OFR) or at <http://www.nara.gov/fedreg/nfthes.html>. Always use the index terms found in the Federal Register Thesaurus for each part involved. The index terms must appear in alphabetical order separated by commas, with the first letter of each term capitalized. If two or more parts are affected by the proposal the following format must be used:*

List of Subjects *List the parts in numerical order.*

23 CFR Part [XXX]

ANPRM Template

Insert appropriate index terms.

23 CFR Part [XXX]

Insert appropriate index terms.

Authority: *(Insert the authority citation for any 23 CFR parts that are likely to be affected by a future NPRM)*

Issued on: [Insert date]

The date of issuance is the signature date.

[Name of Federal Highway Administrator]

Federal Highway Administrator

SNPRM Template

DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part [XXX] *The CFR title and part(s) the document proposes to amend.*

[FHWA Docket No. FHWA-year-] *Docket number from the NPRM.*

RIN 2125- *RIN number that appears on the NPRM.*

[Title] *Brief title describing the substance of the SNPRM. Use the same title as it appears on the NPRM.*

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); request for comments.

SUMMARY: *A brief statement in simple language of the significant substantive changes to the NPRM that the FHWA is proposing. Brief reference to any significant comments, related rulemaking, court decisions or recent legislation upon which these changes are based should be included. Because the document proposes a rulemaking action, use the conditional form of the verb. For example, use "would" rather than "will." Generally, the summary should not contain references to specific regulations, but rather a description of the nature of the regulations affected. For example, if the FHWA is proposing to amend 23 CFR 668.111, instead of citing the specific section, the summary should state that "this proposal would amend the application procedures under the Emergency Relief Program."*

DATES: Comments must be received on or before [Insert date 30/45/60/90/120 days after date of publication in the Federal Register.]

A specific time period should be selected as indicated above and the OFR will insert the appropriate date calculated from the date of publication. The document team may specify a date (rather than a number of days) if sufficient time is available when the document is ready for publication; however, delay in processing may require specific dates to be revised. Generally,

SNPRM Template

the comment period for FHWA SNPRMs is 90 days; however, the time period may be shorter or longer depending on the circumstances. This section also may include other relevant dates such as a public meeting date. However, place any discussion of, for example, the meeting agenda, in the Supplementary Information section.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: [Name of person most knowledgeable about the technical contents of the document, i.e., the team leader, [Office], [Routing Symbol], [Phone Number]; or [Name of attorney most knowledgeable about the legal aspects of the document], Office of the Chief Counsel, [Routing Symbol], [Phone number], 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.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS)

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at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also 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.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background *Provide information on the NPRM, including the date of publication and Federal Register citation, and a brief summary of the NPRM (what it proposed and why). Also include a brief discussion of why the SNPRM is being issued (e.g., to respond to significant comments or to bring the proposals in the NPRM up to date with new provisions contained in court orders, statutes, legislation, etc. which were issued subsequent to publication of the NPRM).*

Discussion of Comments on the NPRM *Include the NPRM's comment period closing date and the number of comments received. Provide a summary of the comments on the NPRM. Provide the FHWA's analysis and disposition of those comments, particularly of comments that led the FHWA to issue the SNPRM. Alternatively, state that the analysis and disposition of the comments from both the NPRM and the SNPRM will appear in the final rule. The organization of this section may vary depending on the number and complexity of the comments and whether the SNPRM relates to all or only parts of the NPRM. Comments may be categorized by, for example, 23 CFR section commented on or the topics raised in the comments.*

General Discussion of the Proposals *Discuss the proposed sections of the NPRM that would be affected by the comments, decisions, statutes, related actions, etc., described under "Background" and how the SNPRM would amend these sections to meet the new requirements. State clearly whether all or only some of the sections proposed to be amended in the NPRM are*

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set forth in the proposed rule language below. Make clear to the reader which of the proposed sections in the NPRM that are not included below are still under consideration by the agency. Include the FHWA's specific requests for comments on the SNPRM, e.g., general comments and ideas, technical or economic data, specific procedures, and entities that would be affected if rulemaking were to proceed.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address.

Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures *This section should not restate background information because this information is found elsewhere in the document. The following introductory language should be used with the wording in the brackets selected as appropriate for the proposed action. Subheadings such as "Benefits," "Costs," and "Benefit/Cost Comparison" may be used, as appropriate, after the introductory language.*

This rulemaking would supplement the FHWA's NPRM proposing to amend its regulations regarding *[insert subject area of NPRM]*. The FHWA has determined preliminarily that this action *[would/would not]* be a significant regulatory action within the meaning of Executive Order 12866 or *[would/would not]* be significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be

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[minimal/significant]. *[Explain why the action would/would not be significant and why the economic impact would be minimal or significant. If the action is determined to be insignificant and have minimal economic impact, add the following:]*

These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs; nor will amendment of this regulation raise any novel legal or policy issues. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this SNPRM on small entities and has determined it [would/would not] have a significant economic impact on a substantial number of small entities.

[Insert explanation of the regulatory flexibility finding. If the finding is that there would not be an impact insert the following after the explanation]: For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This SNPRM [would/would not] impose unfunded mandates as defined by the Unfunded

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Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This proposed rule [would/would 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 (2 U.S.C. 1532).

[Insert explanation of the unfunded mandates finding, i.e. how did you make the determination? If the SNPRM will impose unfunded mandates, the FHWA should include the following statement]: Therefore, the FHWA has prepared a separate written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. A copy of the FHWA's Regulatory Accountability and Reform Analyses is included in the docket. Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the affects on State, local, and tribal governments and the private sector.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action [does/does not] raise sufficient federalism implications to warrant the preparation of a Federalism assessment. This SNPRM [would/would not] preempt any State law or State regulation. *[If there are insufficient federalism implications, add the following statement:]* No additional costs or burdens would be imposed on the States as a result of this action, and the States' ability to discharge traditional State governmental functions would not be affected by this rulemaking.

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Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number [Insert number], [Insert Program Name]. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities [apply/do not apply] to this program. *If applicable, insert the following:* Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

This action [does/does not] create a collection of information requirement for the purpose of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), 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 FHWA has determined that this proposal [contains/does not contain] collection of information requirements for the purposes of the PRA.

(If applicable, insert discussion of the information collection requirements, including any already approved OMB number(s) and expiration date(s), burden hour estimates and the following paragraph. If there could be a question as to the applicability of the PRA, include brief reasoning as to why it does NOT apply.)

The FHWA is required to submit [this/these] proposed collection(s) of information to OMB for review and approval and, accordingly, seeks public comments. Interested parties are invited to send

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comments regarding any aspect of these information collection requirements, including, but not limited to: (1) whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act *When an action is not categorically excluded, an environmental assessment (EA) must be prepared to determine whether a finding of no significant impact (FONSI) or an environmental impact statement (EIS) should be prepared for the action. For rulemaking projects, FONSI and EISs are placed in the docket for public review. If an action is categorically excluded, use language similar to the following.*

The FHWA has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347). The SNPRM [would/would not] constitute a major Federal action significantly affecting the quality of the human environment.

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 [XXX] *A list of the index terms for each part of 23 CFR cited in the heading of the NPRM. The terms are common words used to index the regulations of all agencies. The "List of Subjects," which provides the terms for each part contained in the Federal Register Thesaurus of Indexing Terms, is available from the Office of the Federal*

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Register (OFR) or at <http://www.nara.gov/fedreg/nfthes.html>. Always use the index terms found in the Federal Register Thesaurus for each part involved. The index terms must appear in alphabetical order separated by commas, with the first letter of each term capitalized. If two or more parts are affected by the proposal the following format must be used:

List of Subjects *List the parts in numerical order.*

23 CFR Part [XXX]

Insert appropriate index terms.

23 CFR Part [XXX]

Insert appropriate index terms.

Issued on: [Insert date]

The date of issuance is the signature date.

[Name of Federal Highway Administrator]

Federal Highway Administrator

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part [XXX], as set forth below:

PART [XXX]--[TITLE] *The title must be in all caps, and if the title requires more than one line, the second and any succeeding line are flush with the left margin directly under the "P" in "Part."*

1. The authority citation for part [XXX] [continues/is revised] to read as follows: *The authority citations appear after the title of each amended part and are periodically updated by HCC.*

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Authority: 23 U.S.C. [XXXXXX, XXXXXX, XXXXXX.]

2. Amend § [XXX.XXX] to ... : *The OFR requires the use of specific amendatory language (for example, amended, added, removed, revised, and corrected) and the FHWA is not permitted to add to the list. For a description of the available amendatory terms and their proper use, see Section 1.13 of the Federal Register Document Drafting Handbook.*

§ [XX.XXX Title].

All paragraphs must be indented 5 spaces from the left margin. Do not use any further indentations.

(a) XXXXXXX

(b) XXXXXX

(1) XXXXXX

(i) XXXXX

* * * * *

See Section 1.14 of the Federal Register Document Drafting Handbook for the proper use of asterisks.

PART [XXX]--[TITLE]

3. The authority citation for part [XXX] [continues/is revised] to read as follows: *Continue numbering the individual proposals sequentially. Do not begin each new part with the number "1. "*

Authority: 23 U.S.C. [XXXXXX, XXXXXX, XXXXXX].

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4. Amend § [XXX.XXX] to ... :

§ [XX.XXX Title].

Start indented paragraph here...

(a) XXXXXXX

(b) XXXXXX

(1) XXXXXX

(i) XXXXX

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DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part [XXX] *The CFR title and part(s) the document amends.*

[Docket No. FHWA - year-] *These numbers generally are left blank. The Office of the Chief Counsel (HCC) assigns the docket before sending the document to the Office of the Federal Register (OFR). However, if a docket has been opened for the project, for example if a docket was opened for comments received before issuance of the interim final rule, use the previously assigned docket number.*

RIN 2125- *If a Regulation Identification Number (RIN) has been assigned to the project it can be found in the Semiannual Regulatory Agenda. However, if a RIN has not been assigned, HCC assigns the number before the project is listed for the first time in the Semiannual Regulatory Agenda. The prefix "2125 - " is used for all FHWA rulemakings.*

[Title] *Title of interim final rule.*

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: *A brief statement in simple language of what action is being taken, why the action is necessary, and the intended effect of the action. Because this document amends the regulations, all verbs describing the intended effect of the action should be in the present tense. Generally, the summary should not contain references to specific regulations, but rather a description of the nature of the regulations affected. For example, if the FHWA is amending 23 CFR 668.111, instead of citing the specific section, the summary should state that "this interim final rule amends the application procedures under the Emergency Relief Program."*

DATES: This interim final rule is effective on [Insert date XX days after date of publication in the Federal Register.] Comments must be received on or before [Insert date 30/45/60/90/120 days after

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date of publication in the Federal Register.] *Multiple dates necessitate use of the caption "DATES."*

The Administrative Procedure Act (APA) § 4, 5 U.S.C. 553(d) requires publication of an amendment in the Federal Register at least 30 days before the effective date of the interim final rule, unless good cause, as prescribed in the APA, is found. The justification for an earlier date must be explained in the preamble.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: [Name of person most knowledgeable about the technical contents of the document, i.e., the team leader], [Office], [Routing Symbol], [Phone Number], or [Name of attorney most knowledgeable about the legal aspects of the document], Office of the Chief Counsel, [Phone number], 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.

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SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also 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.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background. *Statement of the problem the interim final rule attempts to resolve, the history of the problem including safety considerations and technological changes, the current requirements and why they do not adequately address the problem, reference material such as reports used as a basis in drafting the rule, and related activity that also may be pending. This section should state why the approach to the problem is being adopted (that is, the "justification" or "rationale" for the interim final rule). Each alternative considered should be discussed, giving the reason for rejecting it. The following headings should be used when appropriate.*

Statement of the Problem. *Summary of problem the rule is attempting to resolve. Preferably not longer than one double-spaced page.*

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History. *How we got where we are today; for example, safety considerations, technological changes, relevant legislation, and past rulemakings.*

Reference Material. *Discuss each report, study, research evaluation, or any other document used as a basis for the proposal. Generally, each report cited in the interim final rule must be available to the public. If a report was relied on in deciding to issue the interim final rule, a copy of that report must be placed in the docket. However, if a report contains proprietary or privacy information, that information should be withheld from the docket. A copy of the remainder of the report, if reasonably separated, should be included in the docket.*

Related Activity. *Other related actions pending.*

General Discussion of the Interim Final Rule *A technical evaluation of the problem, how the interim final rule would address the problem, and alternatives considered. If the document amends several regulations, this section may be followed by a general discussion and a section-by-section analysis of the interim final rule.*

Section-by-Section Discussion of the Interim Final Rule *The section-by-section analysis should address each CFR section being amended, in numerical order, identified by the section number. If the same change is made to more than one section, those sections may be discussed together by section number or topic.*

Discussion of Dates *If necessary, this section may be used to discuss compliance dates and reporting requirements.*

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.

Explain the reasons for a finding of good cause to except notice and public comment. For example, immediate action is necessary to ensure the public safety; the rule is of minor

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impact to the public (e.g., corrections and clarifications); the public interest would be defeated by an NPRM.

Accordingly, the FHWA finds that there is good cause to waive prior notice and comment for the reasons described above. Comments received will be considered in evaluating whether any changes to this interim final rule are required. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

[In cases where the interim final rule will be made effective upon publication, include the following language]:

The APA also allows agencies, upon a finding of good cause, to make a rule effective immediately upon publication, 5 U.S.C. 553(d)(3). The FHWA has determined that good cause exists in this instance to make this rule effective for the following reasons: *[Insert reasons]*. We emphasize that making these rules effective immediately will ensure *[Insert intended results of this action, e.g., immediate use of funding for specific project(s)]*.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures *This section should contain a brief summary of the full regulatory evaluation or analysis being placed in the docket. It should not restate background information because this information is found elsewhere in the document. The following introductory language should be used with the wording in the brackets selected as appropriate for the rulemaking action. Subheadings such as "Benefits," "Costs," and "Benefit/Cost Comparison" may be used, as appropriate, after the introductory language.*

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The FHWA has determined that this action [is/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/significant]. *[Explain why the action would/would not be significant and why the economic impact would be minimal or significant. If the action is determined to be insignificant and have minimal economic impact, add the following]:*

These changes 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 has evaluated the effects of this action on small entities and has determined that this action [will/will not] have a significant economic impact on a substantial number of small entities.

[Insert explanation of the regulatory flexibility finding. If the finding is that there will not be an impact insert the following after the explanation]: For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. The FHWA will reexamine this certification after reviewing the comments to this rule.

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Unfunded Mandates Reform Act of 1995

This interim rule [does/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/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. *[Insert explanation of the unfunded mandates finding, i.e. how did you make the determination? If the rule will impose unfunded mandates, the FHWA should include the following statement]:* Therefore, the FHWA has prepared a separate written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. A copy of the FHWA's Regulatory Accountability and Reform Analyses is included in the docket.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action [does/does not] have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action [does/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 [Insert number], [Insert Program Name]. The regulations implementing Executive Order 12372 regarding intergovernmental consultation

Interim Final Rule Template

on Federal programs and activities [apply/do not apply] to this program.

Paperwork Reduction Act

This action [contains/does not contain] a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. *[If the rule will contain an information requirement, insert the following]:*

The FHWA is required to submit [this/these] proposed collection(s) of information to OMB for review and approval and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act *When an action is not categorically excluded, an environmental assessment (EA) must be prepared to determine whether a finding of no significant impact (FONSI) or an environmental impact statement (EIS) should be prepared for the action. The preamble should summarize the agency findings. For rulemaking projects, FONSI and EISs are placed in the docket for public review. If an action is categorically excluded, use language similar to the following.*

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

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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 [XXX] *A list of the index terms for each part of 23 CFR cited in the heading of the interim final rule. The terms are common words used to index the regulations of all agencies. The "List of Subjects," which provides the terms for each part contained in the Federal Register Thesaurus of Indexing Terms, is available from the Office of the Federal Register (OFR) or at <http://www.nara.gov/fedreg/nfthes.html>. Select appropriate terms for the document from the list of index terms found in the Federal Register Thesaurus for each part involved. The index terms must appear in alphabetical order separated by commas, with the first letter of each term capitalized. If two or more parts are affected by the rule, the following format must be used:*

List of Subjects *List the parts in numerical order.*

23 CFR Part [XXX]

Insert appropriate index terms.

Issued on: [Insert date]

The date of issuance is the date the interim final rule is signed.

[Name of Federal Highway Administrator]

Federal Highway Administrator

Interim Final Rule Template

In consideration of the foregoing, the FHWA is amending title 23, part [XXX], Code of

Federal Regulations as follows:

PART [XXX] - [TITLE] *The title must be in all caps and if the title requires more than one line, the second and any succeeding line are flush with the left margin directly under the "P" in "Part."*

1. The authority citation for part [XXX] [continues/is revised] to read as follows: *The authority citations appear after the title of each amended part and are periodically updated by HCC.*

Authority: 23 U.S.C. [XXXXXX, XXXXXX, XXXXXX.]

2. Amend § [XXX.XXX] to ... : *The OFR requires the use of specific amendatory language (for example, amended, added, removed, revised, and corrected), and the FHWA is not permitted to add to the list. For a description of the available amendatory terms and their proper use, see Section 1.13 of the Federal Register Document Drafting Handbook.*

§ [XX.XXX Title].

All paragraphs must be indented 5 spaces from the left margin. Do not use any further indentations.

(a) XXXXXXX

(b) XXXXXX

(1) XXXXXX

(i) XXXXX

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* * * * *

See Section 1.14 of the Federal Register Document Drafting Handbook for the proper use of asterisks.

PART [XXX]-[TITLE]

3. The authority citation for part [XXX] [continues/is revised] to read as follows: *Insert the appropriate authority citation for the part affected by the following amendment. Continue numbering the individual proposals sequentially. Do not begin each new part with the number "1."*

Authority: 23 U.S.C.[XXXXX, XXXXX, XXXXX].

4. Amend § [XXX.XXX] to ... :

§ [XX.XXX Title].

Start indented paragraph here...

(a) XXXXXXX

(b) XXXXX

(1) XXXXX

Template for Notice of Withdrawal of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part [XXX] *The CFR title and part(s) the NPRM proposed to amend.*

[FHWA Docket No. FHWA-year-] *Docket number from the NPRM.*

RIN 2125- *RIN number that appears on the NPRM.*

[Title] *Use the same title as it appears on the NPRM.*

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of rulemaking.

SUMMARY: This document withdraws the rulemaking in which FHWA proposed to amend its requirements on *[Insert subject. Insert a statement of the perceived need for the rulemaking and a brief explanation of why that need is no longer a consideration.]*

FOR FURTHER INFORMATION CONTACT: [Name of person most knowledgeable about the technical contents of the document, i.e., the team leader, [Office], [Routing Symbol], [Phone Number] or [Name of attorney most knowledgeable about the legal aspects of the document], Office of the Chief Counsel, [Routing Symbol], [Phone number], 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.

Template for Notice of Withdrawal of Proposed Rulemaking

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a 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.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov>.

If this document or any background documents are available on the FHWA home page, insert that information here.

Background *Provide information on the NPRM, including the date of publication and Federal Register citation, and a brief summary of the NPRM (what it proposed and why). Also include a brief discussion of why the withdrawal is being issued.*

Discussion of Comments on the NPRM *Include NPRM's comment period closing date and the number of comments received. Provide a summary of the comments on the NPRM. Provide the FHWA's analysis and disposition of those comments, particularly of comments that led the FHWA to issue the withdrawal. The organization of this section may vary depending on the number and complexity of the comments and whether the agency chooses to address the comments in detail. Comments may be categorized by, for example, 23 CFR section commented on or the topics raised in the comments.*

Comments and Agency Response

After reviewing the comments submitted in response to the NPRM, FHWA has decided to withdraw our rulemaking on this issue. *[Provide reasons for the withdrawal based on the comments received].*

Template for Notice of Withdrawal of Proposed Rulemaking

For the reasons set forth above, FHWA has decided to withdraw the rulemaking action on *[Insert subject of rulemaking]*.

Authority: 5 U.S.C. 561 et seq.; 49 U.S.C. 31136, 31502; and 49 CFR 1.48

Issued on: *[Insert date]*

The date of issuance is the date the notice is signed.

[Name of Federal Highway Administrator]

Federal Highway Administrator

Template for Notice of Withdrawal of Proposed Rulemaking

7.0 PUBLIC PARTICIPATION IN RULEMAKING

7.1 Introduction

This section describes the procedures for public participation in the rulemaking process. These procedures are established by statute and DOT Order. In addition, it is the FHWA's policy to provide for and encourage public participation in the rulemaking process.

The APA establishes the procedures for "notice and comment" rulemaking. Public comments are sent to DOT, where they may be reviewed by the public. All rulemaking documents containing a request for comments specify the length of the comment period and where the comments must be sent. Section 8.2 Legislation, includes a more detailed description of the provisions of the APA.

7.2 Petitions for Rulemaking

A petition for rulemaking is a request from the public to issue, amend, or repeal a rule. The APA § 4, 5 U.S.C. 553(e), requires agencies to allow interested persons to petition for rulemaking. See Section 8.0 Legal And Procedural Requirements For Rulemaking for more information on the APA. Such petitions ordinarily originate with companies or individuals directly affected by the regulation or with organizations having a vested interest in some element of highway construction or highway safety. Petitions for rulemaking also are not always submitted using the formal title "petition for rulemaking." Sometimes the FHWA receives letters, the content of which makes it clear the writer would like a rule change, and it is up to the agency to decide to handle the letter as a petition for rulemaking. If the program office decides to grant the petition, it proceeds with a rulemaking project. If the program office determines that it is not appropriate to grant a petition for rulemaking, it prepares and coordinates a denial letter.

7.3 Ex Parte Contacts

Definition. An ex parte contact is any communication between the FHWA and a party outside the government related to a specific rulemaking proceeding, before that proceeding closes. A rulemaking proceeding does not close until the final rule is published. "Ex parte" is a Latin term that is interpreted to mean "one sided" and indicates that not all parties to an issue were present when it was discussed. Because some interested persons, including the general public, are excluded from an ex parte communication, such a contact may give rise to the appearance of impropriety. Written

comments submitted to the docket are not ex parte contacts because they are available for inspection by all members of the public.

Scope. Whether ex parte contacts are initiated by the FHWA or by a member of the public (including affected industry), they are improper if they affect the basic openness and fairness of the rulemaking process. Because of this possibility and because of the possible appearance of impropriety, DOT policy on ex parte contacts is very strict. This policy, however, does not significantly restrict the gathering of information needed for the issuance of a rule.

DOT Policy. The following is DOT policy on ex parte contracts:

General. It is DOT policy to encourage full public participation in rulemaking actions and to provide for open development of rules (see DOT Order 2100.2, Policies for Public Contacts in Rulemaking). The DOT policy does provide as follows for appropriate ex parte contacts:

To assure adequate public participation, apart from the opportunity to respond in writing to a notice of proposed rulemaking, and to appear and be heard at a hearing. . . [p]ersons directly responsible for a rulemaking action should undertake such contact with the public as will be helpful in the resolution of questions of substance and justification, and should be receptive to proper contacts from those affected by or interested in the proposed action.

The DOT General Counsel has indicated specifically that it is permissible to talk to the public to obtain any up-to-date information needed for the rulemaking action or to clarify written comments. In the development of a proposed rule, this applies to the specific need to obtain a thorough understanding of the problem being addressed. Similarly, only the parties to be regulated may have information needed to thoroughly evaluate the cost impact of the action under consideration.

Disclosure. While the DOT order recognizes the importance of public contacts, it also contains a strict mandate to disclose these contacts:

To discharge the Department's obligation to conduct its rulemaking activities in a public manner, interested members of the public should be afforded adequate knowledge of such contacts. This is necessary to assure the equal opportunity to which all interested members of the public are entitled in making their views known to the Department. Knowledge of the substance of contacts with individual members of the public may be as important for consideration by other interested members of the public as knowledge of individual written comments. Further, if such knowledge is not made available, the Department

may be deprived of informed and valuable comment.

Recording Contacts. In implementing this order, the DOT General Counsel has directed that each communication that could influence the decisionmaker be reflected in the rulemaking record (the docket or the preamble). There are two reasons for this requirement: (1) the record can be as complete as possible to permit full judicial review; and (2) all members of the public have equal access to the information available to the decisionmaker and, therefore, an equal opportunity to present their views.

Proprietary Data. The obligation to provide equal access does not require the disclosure of proprietary information; the disclosure of the substance of policy-related communications is sufficient.

Permitted Contact. The kind of public contacts permitted and the procedures to be followed depend on when the contact occurs in the rulemaking process. The following is a discussion of the requirements of DOT policy at each phase of rulemaking. A summary of these requirements may be found in the chart at the end of this section.

Contacts Made Before the Issuance of an ANPRM, NPRM, SNPRM, Direct Final Rule, or Interim Final Rule. DOT Policy authorizes ex parte contacts needed to obtain technical and economic information. If such a contact influences a rulemaking action, that contact should be discussed in the preamble of the rulemaking action, unless it would be unreasonable to do so. For example, when the development of a rule involves numerous ex parte contacts to gather information, it is appropriate in most cases to refer generally to the gathering of information, and it is unnecessary to discuss individual contact in the rule preamble. When these contacts are not discussed in the preamble--

1. A report discussing each contact or group of related contacts should be placed in the docket when it is opened and before the issuance of the rulemaking action, and
2. The preamble to the rulemaking action should contain the following statement:

In preparation of notices and immediately adopted final rules without notices, it is the practice of the FHWA to obtain technical information and information on operational and economic impacts. A discussion of each contact or series of contacts influencing the agency's position may be found in the rules docket.

Also, note that it is the policy of the FHWA and the DOT not to provide parties outside the government with the text of rulemaking documents under consideration. However, when necessary, discussion and disclosure should be limited to the minimum amount of rule text

necessary to obtain information on technical, operations, and economic impacts needed for agency deliberations. Under no circumstances is preamble text to be distributed before publication.

Contacts Made During the Comment Period. Ex parte contacts during the comment period are strongly discouraged. If the agency wants to discuss with the public its preliminary thinking on a rulemaking action, it should be done in a forum open to all members of the public (see Section 7.4 Regulatory Negotiation) and announced in the Federal Register. Members of the public who contact the agency by phone or in person for the purpose of discussing the proposal during the comment period should be advised to submit a written comment to the official docket during the comment period. If such contact occurs, a summary of the contact must be placed in the docket. However, persons who contact the FHWA simply to obtain information regarding the proposal may be provided with the information that already has been made available to the general public. No record of this type of contact is required.

Contacts Made After the Closing Date for Comments. Contacts made after the close of comment period should be avoided. If such contact occurs, many interested parties may not receive valuable information because they believe there is no need to check the docket after the closing date for comments. Also, minimizing such contact avoids the appearance of improper influence.

1. Written material. Any written material received should be placed in the docket; however, late comments should be considered only to the extent that consideration does not cause undue expense or delay.
2. Oral communications. Meetings organized by the FHWA must be announced in the Federal Register. Also, the FHWA should consider reopening the comment period to accommodate additional comments made at the meeting. Substantive oral communications in any other form at this stage are discouraged by DOT policy. However, if such contact occurs, a summary of the contact must be placed in the docket. Also, if the substance of a rulemaking action is significantly changed as a result of oral communications after the comment period has closed, DOT policy and practice requires that the comment period be reopened by issuing an SNPRM that addresses these reasons for the change.

In all cases, the person who makes the contact should be informed at the earliest opportunity that a report of the contact will be prepared and placed in the public docket. If at any time there is a question as to the appropriateness of a requested meeting or other contact, HCC should be consulted before the meeting by the contacted FHWA representative.

Figure I - Ex Parte Contact Summary

Before issuance of an ANPRM, NPRM, SNPRM, Direct Final Rule, or Interim Final Rule.

- Permitted:* Contacts by the FHWA to gather needed factual (technical or economic) information.
- Required:* Discussion in the preamble or record in the docket.
- Improper:* Communications intended to influence agency decisions beyond providing factual information.
- Caution:* Any appearance of seeking industry approval should be avoided.

During public comment period.

- Permitted:* Contact made only by the FHWA and only to clarify the facts presented in a written comment.
- Required:* All ex parte contacts must be recorded in the public docket.
- All meetings must be open to the public and announced in the *Federal Register*.
- Improper:* All oral contacts other than those permitted above.

After comment period for an NPRM closes.

- Permitted:* Contact made only by the FHWA and only to clarify the facts presented in a written comment or to obtain factual information necessary for the preparation of the final rule. Inquiries related to rulemaking procedure only (closing dates, addresses) are proper at any time.
- Required:* All ex parte contacts must be recorded in the public docket.
- If an ex parte contact substantially influences the agency's position, the comment period must be reopened. FHWA counsel should be consulted.
- All meetings must be open to the public and announced in the *Federal Register*. Reopening the comment period by issuing an SNPRM must be considered.
- Improper:* All oral contacts other than those permitted above.

7.4 Regulatory Negotiation

The Negotiated Rulemaking Act of 1996, 5 U.S.C. 561-570 allows the FHWA to establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the Administrator determines the use of the negotiated rulemaking procedure is in the public interest.

The traditional method of promulgating rules has long been criticized as burdensome, lengthy, and costly. It all too frequently results in rules subject to post-promulgation litigation. The public comments submitted in traditional APA rulemakings reflect the adversarial dynamics of the process, which tend to encourage interested parties to take extreme positions and to withhold information from each other and from the agency. In this adversarial atmosphere, there is little willingness to acknowledge the legitimate interests of other parties and little effort to aid the agency in constructing solutions to the issues presented by the rulemakings. This atmosphere often contributes to the expense and delay associated with rulemakings, as parties try to position themselves for anticipated litigation.

The Negotiated Rulemaking Act provides another way to do rulemaking. Agencies may develop and promulgate rules and regulations, in appropriate circumstances, through this alternative, consensus-based procedure called negotiated rulemaking or regulatory negotiation, sometimes called reg-neg.

In this process, the head of an agency must first determine if negotiation of a particular rule is in the public interest, since only an agency is authorized to issue rules. If that determination is positive, the agency invites representatives of interests likely to be affected by the proposed regulation to work with each other and with the agency on a negotiating committee to develop a consensus draft of the text of the proposed rule. The agency, in turn, agrees to publish the consensus proposed rule for public comment under the customary APA procedures.

To ascertain whether establishment of a negotiating committee is appropriate and feasible and whether it is possible to assemble a committee fairly representing all affected interests and willing to negotiate in good faith, the agency generally uses the services of one or more neutral advisors known as a “convenor.” The convenor interviews affected interests, including associations, safety groups and enforcement officials, and then submits a written “convening report” of findings and recommendations to the agency head. If a negotiating committee is established, the agency generally uses a neutral party called a “facilitator” to assist the committee in resolving issues and reaching consensus. The convenor and facilitator may be the same person(s). Meetings of the negotiating committee are open to the public. See Section 8.2.5 Negotiated Rulemaking Act for more information.

When properly employed, negotiated rulemaking, which is really an alternative dispute resolution process based on cooperative problem solving, can promote early and significant public participation in agency rulemaking and result in better, more acceptable regulations that avoid litigation and improve compliance. Negotiated rulemaking can also be used to consider options, narrow the issues, and furnish parties with a common knowledge base. The process need not be used for an entire regulation -- for example, it might be possible to identify or select specific issues to submit to a reg-neg process and, subsequently, incorporate the product of that process into a traditional, notice and comment rulemaking, thereby shortening the time required to promulgate a rule, and perhaps minimizing litigation delay after promulgation.

But negotiated rulemaking is not suitable for every agency rulemaking. In determining whether negotiated rulemaking is appropriate, the Administrator must consider if the following conditions exist:

1. There is a need for a rule.
2. There are a limited number of identifiable interests that will be significantly affected by the rule.
3. There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who can adequately represent the interests identified above, and are willing to negotiate in good faith to reach a consensus on a proposed rule.
4. There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time.
5. The negotiated rulemaking procedure will not unreasonably delay issuance of the NPRM and the final rule.
6. The FHWA has adequate resources and is willing to commit such resources, including technical assistance, to the committee.
7. The FHWA, to the maximum extent possible, consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the FHWA for notice and comment.

If the FHWA decides to establish a negotiated rulemaking committee, HCC-10 prepares an announcement to be published in the Federal Register stating the FHWA's intent to establish the committee to negotiate and develop a proposed rule. The negotiating committee is then chartered under the Federal Advisory Committee Act. Appropriate chartering documents are prepared in coordination with HAIM-10. A second Federal Register notice is prepared that announces the establishment of the committee, identifies the organizations and individuals on the committee, announces the first public meeting, and invites public participation.

The templates for a Notice of Intent to Form a Negotiated Rulemaking Advisory Committee and for a Notice of Establishment of a Negotiated Rulemaking Advisory Committee at the end of this section are annotated with guidance for completing each section. An electronic version (available from HCC-10) should always be used because it will contain the most current format.

During the negotiated rulemaking, the FHWA invites interests likely to be affected by a regulation to work together on the negotiating committee to develop a consensus draft of the proposed rule. The FHWA may use an outside negotiating expert to assist the negotiating committee in its deliberations. If the FHWA approves, the consensus proposed rule is then published by the agency for public comment under traditional regulatory procedures. See Diane R. Liff, Administrative Dispute Resolution Act Negotiated Rulemaking Act, Text and Commentary, (Federal Mediation and Conciliation Service, 1997).

7.5 Public Meetings

General. The APA gives agencies discretion to hold public meetings during informal rulemaking. Agencies may decide whether to hold a public meeting and the type of meeting to hold. The agency may hold an informal type of discussion meeting, a more formal presentation of statements for the record with informal questions from the agency and other participants, or a formal trial-type hearing with cross-examination of witnesses. The agency may decide on its own that a public meeting is appropriate when the issues are complex or controversial and when face-to-face exchange of views with industry, consumer groups, and the public would be helpful. The agency also may decide to hold a meeting as a result of a public request.

Responsibilities. The responsibilities for each public meeting are divided among one or more program offices and HCC. Typically, the program office manages the public meeting to ensure it adheres to agency rulemaking policy and the APA. HCC is responsible for the form and legality of documents, such as public notices, which may be drafted for the public meeting. In addition, the program office and HCC are members of an FHWA panel to listen to comments from the public at the public meeting. The rulemaking team is responsible for analyzing the public comments that may affect the substance of the

proposed regulations. See Section 5.3 Comments for further information on public comments.

Procedures. The person charged with arranging a public meeting should--

1. Contact Public Affairs,
2. Arrange for a meeting room,
3. Arrange for a court reporter service, and
4. Publish a notice of public meeting in the Federal Register. This notice should be published at least 30 days before the scheduled date of the public meeting.

Public Meeting Notice Template. The public meeting notice template at the end of this section is annotated with guidance for completing each section of the document. An electronic template (available from HCC-10) should always be used to draft a public meeting notice as it will contain the most current format and instructions for drafting a public meeting notice. Examples of recently published FHWA public meeting notices can be found at the Federal Register Online via GPO Access:
http://www.access.gpo.gov/su_docs/aces/aces140.html.

7.6 Stenographic Transcripts and Reports of Public Contact Related to Rulemaking

Stenographic Transcripts or Meeting Summaries. When a public meeting is held, a stenographic transcript or summary of that meeting must be filed as soon as feasible after the conclusion of the proceedings. Any written documents or exhibits presented by the participants in support of their respective positions must be attached to the stenographic transcript or summary report for inclusion in the official rulemaking docket.

Reports of Public Contact. When there is contact with members of the public during a course of rulemaking (either before or after the issuance of an NPRM), a report must be filed as provided in Section 7.3 Ex Parte Contacts.

Content of Reports. Each report filed in the official rulemaking docket shall be entitled "Report of Public Contact in Rulemaking Proceeding" and include the following items of information in the order listed:

1. Subject;
2. Docket or notice number;
3. Date and place of contact;
4. Type of contact (for example, meeting, telephone call, conference);
5. Names and representative capacities of the persons participating;
6. Summary of the contact, including any specific commitments made by DOT/FHWA personnel; and
7. Signature of the person making the report.

Because of the variety of conversations that must be reported, adapting the report to the circumstances of a particular contact may be necessary.

7.7 Templates

The following pages have templates for developing the Notice of Intent to Form a Negotiated Rulemaking Advisory Committee, Notice of Establishment of a Negotiated Rulemaking Advisory Committee and Notice of Public Meeting.

**Template for
Notice of Intent to Form a Negotiated Rulemaking Advisory Committee**

DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part [XXX] *The CFR title and part(s) the negotiated rulemaking proposes to amend.*

[FHWA Docket No.FHWA-year-] *These numbers generally are left blank. The Office of the Chief Counsel (HCC) assigns the docket before sending the document to the Office of the Federal Register (OFR). However, if a docket has been opened for the project, for example if a docket was opened for comments received before issuance of this notice, use the previously assigned docket number.*

RIN 2125- *If a Regulation Identification Number (RIN) has been assigned to the project it can be found in the Semiannual Regulatory Agenda. However, if a RIN has not been assigned, HCC assigns the number before the project is listed for the first time in the Semiannual Regulatory Agenda. The prefix "2125-" is used for all FHWA rulemakings.*

[Title] *Brief title describing the substance of the negotiated rulemaking.*

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to form a negotiated rulemaking advisory committee.

SUMMARY: The FHWA is announcing its intent to explore the feasibility of conducting a negotiated rulemaking to *[Insert a brief statement about the scope of the proposed regulation, why the action is necessary, and the intended effect of the action].*

DATES: Comments must be received on or before [Insert date 30/45/60/90/120 days after date of publication in the Federal Register.]

Template for Notice of Intent to Form a Negotiated Rulemaking Advisory Committee

A specific time period should be selected as indicated above and the OFR will insert the appropriate date calculated from the date of publication. The document team may specify a date (rather than a number of days) if sufficient time is available when the document is ready for publication; however, delay in processing may require specific dates to be revised. This section also may include other relevant dates such as a public meeting date. However, place any discussion of, for example, the meeting agenda, in the Supplementary Information section.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: [Name of person most knowledgeable about the technical contents of the document, i.e., the team leader, [Office], [Routing Symbol], [Phone Number] or [Name of attorney most knowledgeable about the legal aspects of the document], Office of the Chief Counsel, [Routing Symbol], [Phone number], 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.

**Template for
Notice of Intent to Form a Negotiated Rulemaking Advisory Committee**

SUPPLEMENTARY INFORMATION:

An electronic copy of this document may be downloaded using a 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.nara.gov/fedreg> and the Government Printing Office's web page at:

<http://www.access.gpo.gov>.

If this document or any background documents are available on the FHWA home page, insert that information here.

I. Regulatory Negotiation

The FHWA intends to use the negotiated rulemaking procedure in accordance with the Negotiated Rulemaking Act of 1990, Pub. L. 101 648 (NRA) (5 U.S.C. 561, et seq.). The agency will form an advisory committee consisting of representatives of the affected interests and the agency for the purpose of reaching consensus on the proposed rule. The NRA establishes a framework for the conduct of a negotiated rulemaking and encourages agencies to use negotiated rulemaking to enhance the informal rulemaking process. Under the NRA, the head of an agency must consider whether all of the following conditions exist.

- There is a need for the rule.
- There are a limited number of identifiable interests that will be significantly affected by the rule.

Template for Notice of Intent to Form a Negotiated Rulemaking Advisory Committee

- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who (1) can adequately represent the interests identified; and (2) are willing to negotiate in good faith to reach a consensus on the rulemaking.
- There is a reasonable likelihood that a committee will reach a consensus on the rulemaking within a fixed period of time.
- The negotiated rulemaking process will not unreasonably delay the development and issuance of a final rule. The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee.
- The agency, to the maximum extent possible consistent with its legal obligations, will use the consensus of the committee with respect to developing the rule proposed by the agency for public notice and comment.

Negotiations are conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by a neutral facilitator. The goal of the committee is to reach consensus on the language or issues involved in the rule. If consensus is reached, the agency undertakes to use the consensus as the basis of the proposed rule, to the extent consistent with its legal obligations. The negotiated rulemaking process does not otherwise affect the agency's obligations under FACA, the Administrative Procedure Act and other statutes, including all economic, paperwork and other regulatory analyses.

The FHWA invites comments on the appropriateness of regulatory negotiation for a proposed rule on *[insert subject area]*.

Template for Notice of Intent to Form a Negotiated Rulemaking Advisory Committee

II. Subject and Scope of the Rule

A. Need for the Rule

Provide a detailed history related to the subject of the rulemaking, including previous rulemakings, notices, public hearings and meetings, and court cases.

B. Issues and Questions to be Resolved

Discuss the major issues that the negotiated rulemaking committee should consider, including safety considerations and technological changes, enforcement issues, cost effectiveness, alternative methods of compliance, and administrative and compliance burdens.

The FHWA invites comments on the appropriateness of these issues for consideration by the negotiated rulemaking committee and on whether other issues should also be considered.

III. Procedures and Guidelines

The following proposed procedures and guidelines will apply to this process, subject to appropriate changes made as a result of comments on this Notice or as determined to be necessary during the negotiating process.

A. Notice of Intent To Establish Advisory Committee and Request for Comment

In accordance with the requirements of FACA, an agency of the federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a federal advisory committee. It is the purpose of this Notice to indicate FHWA's intent to create a federal advisory committee, to identify the issues involved in the

Template for Notice of Intent to Form a Negotiated Rulemaking Advisory Committee

rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the use of regulatory negotiation and on the identification of the issues, interests, procedures, and participants.

B. Facilitator

Pursuant to the NRA (5 U.S.C. 566), a facilitator will be selected to serve as an impartial chair of the meetings; assist Committee members to conduct discussions and negotiations; and manage the keeping of minutes and records as required by FACA. The facilitator will chair the negotiations, may offer alternative suggestions toward the desired consensus, will help participants define and reach consensus, and will determine the feasibility of negotiating particular issues.

C. Representation

The Committee will include representatives from FHWA and from the organizations and interests listed below. Each representative may also name an alternate, who will be encouraged to attend all Committee meetings and will serve in place of the representative if necessary. The FHWA representative is the Designated Agency Official (DAO) as required by FACA (5 U.S.C. 10) and will participate in the deliberations and activities of the Committee with the same rights and responsibilities as other Committee members. The DAO will be authorized to fully represent the agency in the discussions and negotiations of the Committee.

FHWA intends to invite the following organizations and interests to participate in the negotiated rulemaking by identifying an individual to serve as a member of the Committee. The organizations listed

**Template for
Notice of Intent to Form a Negotiated Rulemaking Advisory Committee**

have been contacted by the facilitator and have indicated a willingness to serve on the Committee.

FHWA believes that, in addition to the organizations listed, there may be other interests that should be included on the Committee.

The organizations and interests that should participate in the negotiated rulemaking are: *[Insert appropriate organizations and interests depending upon the subject of the negotiated rulemaking.]*

FHWA will consider applications for representation from organizations or interests not appropriately represented by those listed above. Please identify such organizations and interests if they exist and explain why they should have separate representation on the Committee.

D. Applications for Membership

Each application for membership or nomination to the Committee should include: (i) the name of the applicant or nominee and the interest(s) such person would represent; (ii) evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent; and (iii) a written commitment that the applicant or nominee would participate in good faith.

Please be aware that each individual or organization affected by a final rule need not have its own representative on the Committee. Rather, each interest must be adequately represented, and the Committee should be fairly balanced.

Template for Notice of Intent to Form a Negotiated Rulemaking Advisory Committee

E. Good Faith

Participants must be committed to negotiate in good faith. Therefore, it is important that senior officials within each interest group be designated to represent that interest. No individual will be required to “bind” the interests he or she represents, but the individual should be able to represent the interest with confidence. For this process to be successful, the interests represented should be willing to accept the final Committee product.

F. Notice of Establishment

After evaluating comments received as a result of this Notice, FHWA will issue a notice announcing the establishment and composition of the Committee, unless it determines that such action is inappropriate in light of comments received. After the Committee is chartered, the negotiations will begin.

G. Administrative Support and Meetings

Staff support will be provided by FHWA, and meetings will take place in Washington, DC.

H. Consensus

The purpose of the Committee is to develop consensus on an outline for a proposed rule. “Consensus” means the unanimous concurrence among the interests represented on the Committee, unless the Committee explicitly adopts a different definition.

Template for Notice of Intent to Form a Negotiated Rulemaking Advisory Committee

I. Notice of Proposed Rulemaking

The Committee's objective is to prepare a report containing an outline of its recommendations for a notice of proposed rulemaking. This report may also include suggestions for specific preamble and regulatory language based on the Committee's recommendations, as well as information relevant to a regulatory evaluation and an evaluation of the impacts of the proposal on small businesses. To this end, FHWA expects the Committee to address cost/benefit, paperwork reduction and regulatory flexibility requirements. If consensus cannot be achieved for some issues, the report will identify the areas of agreement and disagreement, and explanations for any disagreement. FHWA will use the Committee report to draft a notice of proposed rulemaking, regulatory evaluation, and other analyses, as appropriate.

FHWA will accept the Committee proposal, keeping in mind its statutory authority and other legal requirements. In the event that the agency must reject an issue within the proposal, the preamble to a NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the agency decision to reject the Committee recommendations.

J. Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the Committee will establish detailed procedures for the meetings. The meetings of the Committee will be open to the public. Any person attending the Committee meetings may address the Committee if time permits or file statements with the Committee.

Template for Notice of Intent to Form a Negotiated Rulemaking Advisory Committee

K. Record of Meetings

In accordance with FACA requirements, the facilitator will prepare minutes of all Committee meetings. These minutes will be placed in the public docket for this rulemaking.

L. Tentative Schedule

FHWA plans to convene the first of *[insert the number and frequency of meetings, e.g., five monthly meetings]* *[insert the number of days after publication of a notice of establishment of the advisory committee.]* The date and exact location of that meeting will be announced in the agency's notice of establishment of the advisory committee. Meetings are expected to last *[insert the number of days that each meeting should last]*. The negotiation process will proceed according to a schedule of specific dates that the Committee devises at its first meeting. FHWA will publish a single notice of the schedule of all future meetings in the Federal Register, but will amend the notice through subsequent Federal Register notices if it becomes necessary to do so.

The first meeting will commence with an orientation and regulatory negotiation training program conducted by the facilitator.

Authority: 5 U.S.C. 561 et seq.; 49 U.S.C. 31136, 31502; and 49 CFR 1.48

Issued on: [Insert date]

The date of issuance is the date the interim final rule is signed.

**Template for
Notice of Intent to Form a Negotiated Rulemaking Advisory Committee**

[Name of Federal Highway Administrator]

Federal Highway Administrator

**Template for
Notice of Establishment of a Negotiated Rulemaking Advisory Committee**

DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part [XXX] *The CFR title and part(s) the negotiated rulemaking proposes to amend.*

[FHWA Docket No. FHWA-year-] *Docket number from the Notice of Intent.*

RIN 2125- *RIN Number that appears on the Notice of Intent.*

[Title] *Brief title describing the substance of the negotiated rulemaking. Use the same title as the Notice of Intent.*

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of establishment of a negotiated rulemaking advisory committee and notice of the first meeting.

SUMMARY: The FHWA announces the establishment of a Negotiated Rulemaking Committee to develop recommended amendments to the existing FHWA regulations governing *[Insert a brief statement about the scope of the proposed regulation]*. The purpose of the amendments would be to *[Insert explanation of why the action is necessary]*. The Committee will develop its recommendations through a negotiation process. This notice also announces the time and place of the first advisory committee meeting; the public is invited to attend.

**Template for
Notice of Establishment of a Negotiated Rulemaking Advisory Committee**

DATES: The first meeting of the advisory committee will be from *[Insert time and date of first day of meeting]* and will continue from *[Insert time and date of second day of meeting if second day is required]*.

ADDRESSES: The first meeting of the advisory committee will take place at *[Insert address]*.

FOR FURTHER INFORMATION CONTACT: [Name of person most knowledgeable about the technical contents of the document, i.e., the team leader, [Office], [Routing Symbol], [Phone Number] or [Name of attorney most knowledgeable about the legal aspects of the document], Office of the Chief Counsel, [Routing Symbol], [Phone number], 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.

SUPPLEMENTARY INFORMATION:

An electronic copy of this document may be downloaded using a 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.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov>.

If this document or any background documents are available on the FHWA home page, insert that information here.

Template for Notice of Establishment of a Negotiated Rulemaking Advisory Committee

Background

On *[Insert date]* the Federal Highway Administration (FHWA) published a notice of intent to establish an advisory committee (Committee) for a negotiated rulemaking to develop recommendations for *[Insert explanation]*. The notice requested comment on membership, the interests affected by the rulemaking, the issues that the Committee should address, and the procedures it should follow. The reader is referred to that notice *[Insert in parentheses the Federal Register citation]* for further information on these issues.

FHWA received *[Insert number of comments received]* comments on the notice of intent. *[Insert brief description of the points agreed upon by the commenters.]*

Based on this response and for the reasons stated in the notice of intent, we have determined that establishing an advisory committee on this subject is appropriate and in the public interest. In accordance with the Federal Advisory Committee Act (FACA; 5 U.S.C. App. I sec. 9(c)), we prepared a Charter for the Establishment of a Negotiated Rulemaking Advisory Committee. We intend to file the charter within fifteen (15) days from the date of this publication.

Membership

[Insert a sentence giving the number of individuals who were nominated or who applied for membership to the Committee and a description of the method of consideration for representation on the Committee.] The organizations and interests that will participate in the negotiated rulemaking are: *[Provide a list of Committee members identified by interest in the following format.]*

Template for Notice of Establishment of a Negotiated Rulemaking Advisory Committee

Federal Highway Administration: [Use italics with each new grouping.]

[Name of individual, Department, Agency];

Participation by Non-Members

Meetings of the Committee will be open to the public so that individuals who are not part of the Committee may attend and observe. Any person attending the Committee meetings may address the Committee, if time permits, or file statements with the Committee.

Key Issues for Negotiation

In its notice of intent, FHWA tentatively identified major issues that should be considered in this negotiated rulemaking and asked for comment concerning the appropriateness of these issues for consideration and whether other issues should be added. These issues were:

- *[list the issues following bullets];*

Commenters neither objected to these issues nor suggested that additional issues be addressed.

Accordingly, they will be the issues considered by the Committee (*Or, insert explanation of comments on the issues and agency's decisions about the comments.*)

Procedures and Schedule

Staff support for the Committee will be provided by FHWA and the facilitator, and meetings will take place in Washington, DC, unless agreed otherwise by the Committee.

Template for Notice of Establishment of a Negotiated Rulemaking Advisory Committee

Consistent with FACA requirements, the facilitator will prepare summaries of each Committee meeting. These summaries and all documents submitted to the Committee will be placed in the public docket for this rulemaking.

As stated in the notice of intent, the Committee's objective is to *[Insert brief description of objective.]*

The negotiation process will proceed according to a schedule of specific dates that the Committee devises at its first meeting on *[Insert date]*. FHWA will publish notices of future meetings in the Federal Register. We anticipate that the Committee will meet for up to five two-day sessions beginning in *[Insert month and year]*. If the Committee establishes working groups to support its work, additional meetings for the working groups may be necessary.

FHWA intends to accept the Committee recommendations, keeping in mind its statutory authority and other legal requirements. In the event that the agency rejects any of the recommendations, the preamble to a NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the rejection.

Meeting Agenda

The first meeting of the negotiated rulemaking committee will begin at *[Insert time and date]*, with consideration of Committee ground rules, procedures, and calendar. The Committee will then address the specific issues that should be included in the negotiation and how data to support its deliberations will be developed. In addition, the Committee will consider whether to establish working

**Template for
Notice of Establishment of a Negotiated Rulemaking Advisory Committee**

groups to provide technical support and recommendations for specific aspects of the negotiations. The first meeting will conclude no later than *[Insert time and date]*.

Authority: 5 U.S.C. 561 et seq.; 49 U.S.C. 31136, 31502; and 49 CFR 1.48

Issued on: *[Insert date]*

The date of issuance is the date the notice is signed.

[Name of Federal Highway Administrator]

Federal Highway Administrator

**Template for
Notice of Public Meeting**

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Title] *Brief title describing the substance of the Notice.*

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: *A brief statement of the nature of the meeting, conference, workshop, or other forum to be held, why the meeting is necessary, and the intended effect of the meeting. The summary may also include organizations specifically invited to the meeting in addition to the general public.*

DATES: The meeting will be on [Insert date(s)] at [Insert times].

ADDRESSES: The meeting will be held at [Insert location(s)].

Include street address and phone number of meeting facility, as well as any special logistical information, e.g., accommodation availability at meeting facility.

FOR FURTHER INFORMATION CONTACT: For information on registration and hotel accommodation, contact [Name of person most involved in organizing the meeting], [Organization], [Address], [Phone number], [Fax number (if applicable)], and [E-mail address (if applicable).] For information about the meeting, contact [Name of FHWA person most knowledgeable about the content of the meeting], [Office], [Routing Symbol], [Phone Number], Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590-0001; [E-mail address. Office hours are from 8:30 a.m. to 5:00 p.m. e.t., Monday through Friday, except for legal holidays.

Template for Notice of Public Meeting

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also 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.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background *Statement of the problem or issues the meeting will attempt to address (e.g., soliciting State recommendations on reporting requirements); the history of the problem including safety considerations, technological changes, relevant legislation, and previous meetings; the current requirements and why they do not adequately address the problem; reference material such as reports pertinent to the meeting; any related activity that also may be pending; and the types of input sought by the FHWA.*

Authority: 23 U.S.C.[XXXXXX, XXXXXX, XXXXXX.]

Issued on *[Insert date]*

**Template for
Notice of Public Meeting**

8.0 LEGAL AND PROCEDURAL REQUIREMENTS FOR RULEMAKING

8.1 Introduction

This section contains a summary of legislation, Executive Orders, and DOT policies that set out legal or procedural requirements for FHWA rulemaking activities. While HCC has the primary responsibility for verifying that FHWA rulemaking actions satisfy these requirements, all agency employees should know the basic requirements. Rulemaking team members should be especially aware of the effect and importance of these requirements. For additional information on this subject, see "Rulemaking Requirements for use in the Department of Transportation, Prepared by Neil Eisner, March 2000."

8.2 Legislation

8.2.1 Administrative Procedure Act

The Administrative Procedure Act (APA) established the basic framework for rulemaking in 1946. It is contained in Title 5 of the United States Code beginning at section 551 (5 U.S.C. 551). The Act specifies procedures for both "informal" and "formal" rulemaking. Informal rulemaking, sometimes called "notice and comment" rulemaking, is the rulemaking done by most agencies, including the FHWA. Formal rulemaking is rulemaking that involves an on-the-record, trial-type hearing. It is required by the authorizing legislation of some agencies, but not by the FHWA's statutes.

Applicability. The APA applies to all "rulemaking." Rulemaking is defined as the "agency process for formulating, amending, or repealing a rule." The APA defines a rule as "an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."

Any agency statement that mandates an action on the part of the public may meet the definition of a rule under the APA. For this reason, any other "non-rule" agency documents may not be enforceable against the public because these documents are not issued in accordance with the APA. Agency policy statements that apply to the public, particularly if they bind the agency to act in a certain way without discretion, also may be rules. Questions about the appropriateness of issuing a statement or document that may trigger the APA's requirements should be discussed with HCC.

Requirements. The APA procedural requirements for informal rulemaking are as follows:

1. A general NPRM must be published in the Federal Register (5 U.S.C. 553(b)). The NPRM must contain "the terms or substance of the proposed rule or a description of the subjects and issues involved." Accordingly, an NPRM contains the proposed rule language with a discussion of the justification for the change being proposed.
2. After issuing the NPRM, the agency must give "interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation" (5 U.S.C. 553(c)).
3. In issuing a final rule, the agency must consider and respond to all comments. In addition to this "disposition of comments," the preamble to the final rule must contain "a concise general statement [of] the basis and purpose" of the rule (5 U.S.C. 553(c)).
4. The effective date of the final rule must be at least 30 days after its publication in the Federal Register (5 U.S.C. 553(d)).

These basic requirements have been interpreted and expanded over the years by the three branches of government. Guidance on complying with them will be found in this section and throughout this manual.

Exceptions to Notice and Comment. The APA excepts the following types of rules from the notice and comment requirement:

1. Rules relating to agency organization, procedure, or practice (5 U.S.C. 553(b)(3)(A)).
2. Interpretative rules and general statements of policy (5 U.S.C. 553(b)(3)(A)).
3. Rules for which the agency "for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(3)(B)). The APA further requires that the finding of good cause and a brief statement of the reasons for good cause must be in the preamble to the final rule.

These exceptions have been interpreted to apply in the following circumstances:

1. Impracticability. Notice is impracticable when the proper execution of FHWA functions would be prevented if notice and comment procedures were followed. For example, if an accident investigation or certain service experience indicates that action must be taken *immediately* to ensure the safety of the public, then it would be impracticable for the FHWA to follow notice procedures. In such a case, the Supplementary Information section of the preamble to the final rule should explain the urgent safety or other concerns that justify the finding of “impracticability.”

Several factors may make it difficult for the agency to support a finding of impracticability. For example, while there may be an urgent need for a rule, unless the period for compliance is very short, there usually is time for a brief comment period. Also, if the agency has not acted expeditiously in addressing the problem, the omission of prior notice may not be viewed as justified. In either case, the reason for proceeding without notice should be explained in the preamble.

2. Unnecessary. Notice is unnecessary when there is no particular interest on the part of the public in a rule. This justification is used for publication of minor corrections, clarifications, and editorial changes.
3. Public interest. The public interest exception is seldom present in the absence of one of the first two exceptions. This exception addresses situations in which the interest of the public would be defeated by an NPRM. This is not an easy standard to satisfy separate from a determination of impracticability or lack of necessity. It should not be used indiscriminately to avoid the full rulemaking process.

DOT Notice Requirement. DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, states that opportunity for comment must be extended notwithstanding the notice and comment exception in the APA. Section 12.d. of the order provides:

To the maximum extent possible, notice and an opportunity to comment on regulations should be provided to the public, even when not required by statute, if such action could reasonably be anticipated to result in the receipt of useful information. When an initiating office does not provide notice and an opportunity for the public to comment, (1) a statement of the reasons is included in the final regulation ... and (2) when reasonable, the initiating office should provide notice and opportunity to comment subsequent to the final regulation.

In the case of a final rule that must be adopted without prior notice, a post issuance comment period must be provided unless it is clear that no useful information is likely to be submitted. Such a conclusion should be included in the preamble to the final rule if no comment period is provided.

Public Comment. The APA requires that, once notice has been published, the public must be given time to comment on the proposed rule (5 U.S.C. 553(c)). While the APA does not prescribe any particular amount of time for a comment period, E.O. 12866, Regulatory Planning and Review, states that a proposed regulation should include a comment period of not less than 60 days. However, a longer period may be more realistic in reaching that part of the general public that does not read the Federal Register. The FHWA's informal policy is to provide a 90-day comment period. If a proposed rule is noncontroversial or contains only technical considerations of little importance to the public, a 45-day comment period may be used. However, a period shorter than 60 days may be used only if it can be justified.

Effective Date of Final Rule. The APA requires that a final rule be published in the Federal Register at least 30 days before it becomes effective (5 U.S.C. 553(d)). The 30-day effective date requirement does not apply to the following:

1. Interpretative rules.
2. Policy statements.
3. Rules that grant or recognize an exemption or relieve a restriction.
4. Agency findings that good cause exists for an earlier effective date and the agency publishes its findings in the preamble to the final rule.

All FHWA rulemakings are also subject to the Congressional Review portion of SBREFA. See Section 8.2.8 Small Business Regulatory Enforcement Fairness Act of 1996.

Good Cause Exceptions. The good cause finding supporting an exception to the notice requirement (5 U.S.C. 553(b)(3)(B)) and a good cause finding supporting an effective date earlier than 30 days after publication (5 U.S.C. 553(d)) clearly should be distinguished from one another. While similar considerations may be involved, the preamble should clearly separate the two findings.

Scope of the Notice. The purpose of the APA notice requirement is to ensure that the public is provided a reasonable opportunity to comment on the substance of a proposed rule and the agency's reasons for proposing it. When the agency wishes to modify the proposed rule language in the final rule, care must be taken that the difference is not so great as to make the notice ineffective. The courts routinely have recognized the importance of compliance with the requirement for adequate notice. While courts have supported final rules that are the "logical outgrowth" of the proposal, agencies may not adopt a "wholly new approach." A scope of the notice problem may arise not only from increasing the burden of a proposed new requirement, but also from broadening the scope of relief from a current requirement. The public has a right to comment on loosening requirements as well as tightening them.

If the agency wishes to make a change in the proposed rule that is beyond the scope of the notice, four options are available:

1. The FHWA may issue an SNPRM, allowing the public to comment on the changes before adopting a final rule.
2. The FHWA may adopt a final rule that is within the scope of the original proposal and issue a new notice proposing to supersede or otherwise amend the final rule with a new rule that incorporates the necessary changes.
3. If the changes address an urgent problem sufficient to support a finding of impracticability, the FHWA may include the changes in the final rule and request comments on the change. In this case, the Supplementary Information section of the final rule should include both the discussion of comments submitted regarding the proposed rule and the required finding of impracticability related to the changes. To avoid reopening the entire proposal, the request for comments should be limited to the change in the proposal.
4. The FHWA may withdraw the notice and issue a new NPRM incorporating the changes.

Resources. The APA is found in 5 U.S.C. 551, et seq. (see Administrative Procedure Act, 5 U.S.C., ch. 5). The full text of the APA is contained in the *Federal Administrative Procedure Sourcebook, Statutes and Related Materials*. This sourcebook was published by the Administrative Conference of the United States (ACUS), which is no longer in existence. However, copies of the sourcebook still are available in HCC. The sourcebook also contains the full text of the 1947 *Attorney General's Manual on the Administrative Procedure Act*, which is an excellent information source on the original intent of the provisions of the APA, issued around the time of its passage. Another good discussion of

APA requirements can be found in *A Guide to Federal Agency Rulemaking, 1991*, also published by the ACUS. (*A Guide to Federal Agency Rulemaking* was updated by Jeffrey S. Lubbers for the American Bar Association in 1998.) ACUS, an independent agency and advisory committee created in 1968, studied U.S. administrative processes and made recommendations of improvements to Congress and agencies. From 1968 to 1995, the ACUS issued approximately 200 recommendations, most of which have been at least partially implemented (see ACUS Recommendations).

8.2.2 Federal Advisory Committee Act

The Federal Advisory Committee Act (FACA, 5 U.S.C. app.) requires an agency to establish a formal committee with a charter approved by Congress when it seeks a consensus recommendation from a group including more than one person from outside the government. One meeting can trigger FACA. The FACA does not apply to a group if all persons in that group are government employees.

Requirements imposed on advisory committees include holding open meetings, taking minutes, and having a membership balanced among various views. Advisory committees may be used only for advisory functions. They may not perform any governmental function, such as making the final decision as to what governmental action should be taken.

Responsibility. HCC provides advice on compliance with the FACA and is responsible for legal review of draft committee charters.

8.2.3 Federal Register Act

The Federal Register Act, 44 U.S.C. 1501-1511, was enacted by Congress in 1935 to establish a system for managing, printing, and distributing regulations and other legal documents. The Federal Register Act mandated the availability for public inspection of proposed regulations. In addition, § 3 of the act created the Federal Register, a weekday publication in which proposed and final regulations and other regulatory documents and material are published for public review. In a later amendment to the act, Congress established the Code of Federal Regulations (CFR) to codify the regulations in force at that time. The first CFR was published in 1939.

Responsibility. HCC is the FHWA's point of contact for the Office of the Federal Register (OFR) and forwards FHWA documents to the OFR. See the Federal Register Document Drafting Handbook for guidance and examples for complying with the OFR's format and editorial requirements for preparing documents for the Federal Register.

8.2.4 National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4347, requires

that the FHWA, to the fullest extent possible, include in any "major Federal actions significantly affecting the quality of the human environment" a detailed environmental impact statement addressing--

1. The environmental impact of the proposed action;
2. Any adverse environmental effects that cannot be avoided if the proposal is implemented;
3. Alternatives to the proposed action;
4. The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
5. Any irreversible and irretrievable commitments of resources that would be involved in the proposed action if implemented.

Responsibility. Each program office is responsible for meeting the requirements of the NEPA, the Council on Environmental Quality (CEQ), and DOT Order 56101C. The CEQ's regulations regarding standards for conducting environmental reviews apply to all Federal agencies. The CEQ's regulations are found in 40 CFR 1500-1508.

Identification of Environmental Impacts. Potential environmental impacts should be identified by the rulemaking team as early as possible in the rulemaking process to aid in informed decisionmaking and because assessments of an environmental impact can be both controversial and time-consuming.

Each rulemaking is a Federal action under the NEPA and generally falls into one of the following categories: (1) categorically excluded (CEQ 1508.4) or (2) requires an environmental assessment (CEQ 1508.9) that results in either a FONSI or a full environmental impact statement (CEQ 1508.11).

When the rulemaking team is assisting the program office in determining whether a categorical exclusion is appropriate, the team considers whether circumstances are present that warrant the preparation of an environmental assessment, which results in a FONSI, or a full environmental impact statement. A finding that the rulemaking action is covered by a categorical exclusion normally requires no explanation.

When an environmental assessment or and environmental impact statement is required, the program office develops the Notice of Intent and the EA or EIS.

Environmental Finding. The rulemaking record should reflect that the agency made a proper determination under the NEPA. This finding should be placed in the preamble to both the NPRM and the final rule and addressed in the Summary Sheet.

8.2.5 Negotiated Rulemaking Act

The Negotiated Rulemaking Act of 1990, 5 U.S.C. 561-570, allows the FHWA to establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the Administrator determines the use of the negotiated rulemaking procedure is in the public interest. If the negotiations result in a consensus, the parties would be less likely to judicially challenge the substance of the negotiated rule. In determining whether negotiated rulemaking is appropriate, the Administrator must consider if--

1. There is a need for a rule;
2. There are a limited number of identifiable interests that will be significantly affected by the rule;
3. There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who--
 - Can adequately represent the interests identified in Item No. 2, and
 - Are willing to negotiate in good faith to reach a consensus on a proposed rule;
4. There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
5. The negotiated rulemaking procedure will not unreasonably delay issuance of the NPRM and the final rule;
6. The FHWA has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

7. The FHWA, to the maximum extent possible, consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the FHWA for notice and comment.

Responsibility. If the FHWA decides to establish a negotiated rulemaking committee, the program office prepares an announcement to be published in the Federal Register stating the FHWA's intent to establish the committee to negotiate and develop a proposed rule. The Administrator may use a convenor (a person who impartially assists the FHWA in determining whether a negotiated rulemaking committee is feasible and appropriate to a particular rulemaking) to identify all the interested parties to form the committee. See Section 7.4 Regulatory Negotiation.

8.2.6 Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520, was enacted to minimize the Federal paperwork burden on individuals and small entities and to ensure the greatest possible public benefit from information created, collected, maintained, and used by or for the Federal Government. The Paperwork Reduction Act takes effect in the rulemaking process whenever a rule requires the public to keep records, and/or provide information to the Government, and/or disclose information to a third party. In general, the Paperwork Reduction Act applies when identical information is requested from 10 or more individuals, such as in surveys or questionnaires; however, in the rulemaking process, the act applies to all collections of information contained in regulations of general applicability. The provisions of the Paperwork Reduction Act are implemented in 5 CFR part 1320.

Collection of Information. In accordance with 5 CFR 1320.11, no agency may conduct or sponsor a collection of information unless--

1. The collection of information displays a currently valid OMB control number, and
2. The agency informs persons who are to respond to the collection of information that they are not required to respond unless a currently valid *OMB* control number is displayed.

Responsibility for Data Collection Requirements. If a proposed rule or an amendment to a rule contains a paperwork requirement (reporting, recordkeeping, or disclosure), the program office must do the following:

1. Prepare a narrative justification package in accordance with the guidelines in 5 CFR part 1320. This package consists of answering the questions on Form OMB 83-1 and preparing a Supporting Statement for Paperwork Reduction Act

submissions. The program office submits the package through HAIM-10 and OST (S-80) to OMB for review and/or clearance. The package should be submitted to OMB no later than the day on which the NPRM is published in the Federal Register (5 CFR 1320.11).

2. For an NPRM, include a statement in the NPRM that the reporting and recordkeeping requirements associated with the rule have been submitted to OMB for review under 44 U.S.C. 3507(d) and that comments may be sent to the FHWA.
3. Respond to OMB's comments before the final rule is published. Identify and explain any modifications to the rule or explain why comments received are rejected. The FHWA must discuss OMB's comments in the preamble to the final rule if requested by OMB.

OMB Review of NPRM. Except in the case of emergency processing under 5 CFR 1320.13, OMB has 60 days after publication of the NPRM to file comments on the data collection requirements. OMB must allow at least 30 days after the receipt of the proposed collection of information before submitting its comments to the FHWA or making its decision. If the agency submission does not meet the OMB submission requirements to send a request for OMB review and clearance of a collection on or before publication of the NPRM in the Federal Register (5 CFR 1320.11 (b)), OMB may disapprove the collection of information in the proposed rule within the specified timeframe. If the agency does not submit the collection of information to OMB, OMB may disapprove it at any time.

If OMB has not filed public comments or has approved without conditions the collection of information contained in a rule before the final rule is published in the Federal Register, OMB may assign an OMB control number before publication of the final rule (5 CFR 1320.11 (g)). In addition, OMB may assign a control number during the NPRM stage. If so, the preamble to the final rule would state that the control number previously was assigned, and the assigned control number would be inserted in the preamble's Paperwork Reduction Act paragraph.

OMB Review of Final Rule. On or before the publication of the final rule in the Federal Register, the FHWA must submit the final rule to OMB unless already approved by OMB as described above. No later than 60 days after publication of the final rule, OMB will approve, instruct the agency to make a substantive or material change to, or disapprove the collection of information contained in the final rule.

OMB may issue an instruction to change or disapprove the collection requirements for the following reasons:

1. The agency fails to comply with submission requirements.
2. The agency modifies the requirements without giving OMB a chance to comment at least 60 days before publication of the final rule.
3. The agency responses to OMB's comments are unreasonable and the collection of information is unnecessary for the proper performance of the agency's functions.

Note: If a final rule is issued without going through the NPRM stage, a Paperwork Reduction Act package still must be submitted to OMB for approval before the paperwork burden associated with the final rule can be implemented. This submission to OMB must occur on or before the publication of the final rule. In this case, OMB typically requires the FHWA to publish the final rule with the opportunity for comment on the paperwork portion. A Paperwork Reduction Act paragraph then is included in the preamble to notify the public of the burden and allow the public the opportunity to comment on that burden.

Notification of OMB Review Completion. OMB will notify the FHWA after approving, instructing the FHWA to make a material change to, or disapproving the collection of information. OMB will approve each collection of information for no more than 3 years.

Public Notice. The FHWA may publish a separate notice in the Federal Register to inform the public of OMB's decision upon receipt of OMB's approval, instruction to make a material change to, or disapproval of the collection of information, or OMB's failure to act; however, this is rare. Typically OMB's decision is discussed in the preamble to the final rule.

Other Requirements. The OMB regulations also contain provisions on the emergency processing of submissions of collections of information, 5 CFR 1320.13, and on obtaining approvals for the clearance of the continued collection of information in current rules. OMB must approve all information collections whether voluntary, mandatory, or required for a benefit. In addition, OMB must approve new requests for collection of information whether or not contained in rules and every 3 years thereafter renew currently existing collections. The rules and responsibilities for obtaining approvals for the clearance of the continued collection of information are discussed in 5 CFR 1320.8, 1320.10, and 1320.12.

8.2.7 Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601-612) (amended by the Small Business Regulatory Enforcement Fairness Act of 1996), requires agencies, to the extent consistent with their statutory mandate, to fit regulations to "the scale of businesses, organizations,

and governmental jurisdictions." Agencies are required to "solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The FHWA must consider the impact of its proposed regulations on small entities and where appropriate consider alternatives that would relieve the burden on them. However, the FHWA need not provide small entities special consideration where it would be inconsistent with the safety purpose of the proposed rule.

Responsibility. Whenever the agency is required by the APA to publish an NPRM, the agency must determine whether the proposed rule would have a significant economic impact on a substantial number of small entities. If the agency certifies that it would not have such an impact, SBREFA requires that it provide the "factual basis," not just the "reasons" for its determination. If the proposal would have such an impact, the agency must prepare and make available to the public an initial regulatory flexibility analysis. Both the determination and, if needed, the analysis are prepared by the program office. That office also prepares a summary for the preamble to the NPRM. A final regulatory flexibility analysis is issued when the final rule is issued.

The FHWA can adopt a rule even if it has a negative economic impact on small entities. Where the impact would be significant on a substantial number of small entities, the regulatory flexibility analysis must explain what alternatives were considered, why the agency chose a certain alternative, and why it rejected other alternatives that would have minimized the burdens for small entities.

Definitions. The RFA does not define "significant economic impact." If an agency does not adopt its own standard, the agency must follow the SBA's least restrictive standard for any particular type of entity. The FHWA has not adopted its own standards and uses the standards provided in the RFA.

Agenda. The RFA also requires that each agency publish a semiannual agenda of rulemaking projects that may be significant under the RFA. This agenda can be, and usually is, combined with the Semiannual Regulatory Agenda required under E.O. 12866, Regulatory Planning and Review, and is prepared by HCC.

Periodic Review. The RFA requires a review on a 10-year cycle of all rules to minimize any impact on small entities (5 U.S.C. 610). The FHWA's plan for these reviews is presented in the Semiannual Regulatory Agenda.

8.2.8 Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was enacted in March 1996 because Congress found that small businesses bore a

disproportionate share of regulatory costs and burden. (Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, §§ 202(2)-202(3), 110 Stat. 857) (portions of which are codified in the United States Code and are referenced in this section). Congress also found that fundamental changes were needed in the regulatory and enforcement culture of Federal agencies to make them more responsive to small businesses. Based on these findings, Federal agencies are required to establish a mechanism by which small entities may easily obtain guidance to understand and comply with agency regulations.

In addition, under the RFA, as amended by the SBREFA, the FHWA's final regulatory flexibility analysis must contain the following:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the FHWA of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. A description of the steps the FHWA has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. A statement of factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the FHWA that have an affect on small entities was rejected, also must be included.

Compliance Guides. Agencies must prepare and publish one or more guides explaining the actions a small entity is required to take to comply with each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under the RFA. (SBREFA, Public Law 104-121, § 212, 110 Stat. 858.)

Although the substance of the guides is not subject to judicial review, their contents may be

considered as evidence of the reasonableness or appropriateness of any proposed fines, penalties, or damages in any civil enforcement action against the small entity.

Responsibility for Compliance Guides. The program office is responsible for providing small entity compliance guides to the public. The guides should be released to the public when the final rule is issued.

Congressional Review. The SBREFA also amended Title 5 of the United States Code by adding Congressional Review of Agency Rulemaking (5 U.S.C. 801-808). Before a rule can take effect, the FHWA (HCC) must submit to Congress and to the Comptroller General a report containing the following:

1. A copy of the rule;
2. The proposed effective date of the rule; and
3. A concise general statement on the rule, including whether it is a major rule.

A major rule under SBREFA (5 U.S.C. 804) is defined as any rule that results in or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

In addition, on the same day the report is submitted, the FHWA (HCC) also must submit to the Comptroller General and make available to Congress the following:

1. A complete copy of the cost-benefit analysis of the rule;
2. The FHWA's actions pursuant to 5 U.S.C. 603, 604, 605, 607, and 609 (these

sections relate to the initial and final regulatory flexibility analysis, avoidance of duplicative or unnecessary analyses, preparation of analyses, and procedure for gathering comments);

3. The FHWA's actions relevant to the Unfunded Mandates Reform Act of 1995 §§ 202-205, 2 U.S.C. 1532-1535 (these sections relate to small government agency plans; State, local, and tribal government input; statements for significant regulatory actions; and least burdensome option explanations); and
4. Any other relevant information or requirements under any other act and any relevant E.O.s.

Effective Date. Congress must receive a copy of the rule before the rule is effective. Except for a major rule, a rule will take effect as noted in the rule after submission to Congress.

A major rule will take effect on whichever of the following is the latest--

1. 60 days after Congress receives the report or 60 days after the rule is published in the Federal Register;
2. If Congress passes a joint resolution of disapproval and the President vetoes the resolution, the date either House of Congress votes and fails to override the veto or 30 session days after Congress received the veto, whichever is earlier; or
3. The date the rule would have otherwise taken effect if not for this section (unless a joint resolution of disapproval is enacted under 5 U.S.C. 802).

8.2.9 Unfunded Mandates Reform Act of 1995

One of the purposes of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501-1571, is to assist Federal agencies in their consideration of proposed regulations affecting State, local, and tribal governments by requiring Federal agencies to--

1. Develop a process to enable the elected and other officials of State, local, and tribal governments to provide input when Federal agencies are developing regulations; and

2. Prepare and consider estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and tribal governments and the private sector before adopting such regulations and ensure that small governments are given special consideration in that process.

Required assessments. Under 2 U.S.C. 1531, the FHWA must, unless otherwise prohibited by law, assess the effect of Federal regulatory actions on State, local, and tribal governments and the private sector (other than to the extent that such regulations incorporate provisions required by law).

Written Statements. The UMRA requires Federal agencies to prepare statements to accompany significant regulatory actions (2 U.S.C. 1532). These statements are required before an agency promulgates any NPRM or final rule (preceded by an NPRM) that includes a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more adjusted annually for inflation in any 1 year. In general, each written statement must contain information on the authority under which the proposed rule or rule is being promulgated; cost and benefits to State, local, and tribal governments; the effect of the action on the national economy; and the consultation with elected representatives of the affected State, local, and tribal governments with which the FHWA has communicated in the course of the rulemaking. See 2 U.S.C. 1532(a) for specific information required in written statements.

Summary Statements. In addition, before issuing an NPRM or final rule for which a statement is required, the FHWA must include in the NPRM or final rule a summary of the information in the statement (2 U.S.C. 1532(b)).

As required by 2 U.S.C. 1533-1534, the FHWA has developed a plan to--

1. Notify small governments (as defined in 5 U.S.C. 601) potentially affected by the rulemaking action, and
2. Enable officials of the affected state, local and tribal governments to provide meaningful and timely input on significant Federal mandates.

In addition, the FHWA has implemented a process to permit the elected officials of State, local, and tribal governments (or their designees) to provide input in the development of such regulatory proposals.

Responsibility. The program office is responsible for assessing the effect of the FHWA's regulatory actions on State, local, and tribal governments and the private sector and for preparing the required written and summary statements for all proposed and final rules.

The program office prepares the section of the preamble that contains the results of its assessments.

In accordance with 2 U.S.C. 1535, before promulgating a rule for which a written statement is required, the FHWA (generally, the program office) will identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective, and/or least burdensome alternative that achieves the objectives of the rule.

For proposed and final rules that do not meet the thresholds discussed above in the paragraph on written statements, the program office includes a section in the preamble briefly describing the UMRA and stating that the proposed or final regulation does not have an effect on State, local, or tribal governments or the private sector. See sample language for the unfunded mandates reform analysis in the NPRM and final rule templates in Sections 4.0 and 5.0.

8.2.10 Section 106 of the National Historic Preservation Act

(See FHWA Environmental Guidebook, Tab 3; and National Historic Preservation Act of 1966 (PL 89-665; 16 U.S.C. 470a, et seq.) (PL 89-665; 80 Stat. 915, amended 1980, 1992) (PL 96-515; 94 Stat. 2997)).

The standard review process for compliance with Section 106 of NHPA appears in a regulation by the Advisory Council on Historic Preservation entitled "Protection of Historic Properties" (36 CFR part 800). The process involves the following five basic steps:

1. Identify and evaluate historic properties. Review background information and consult the State Historic Preservation Officer (SHPO).
2. Assess effects. Agency assesses effects its undertaking will have. Possible determinations: No effect, No adverse effect, or Adverse effect.
3. Consultation. If there is a prospective adverse effect then the agency consults with the SHPO and other interested parties to consider ways to make the undertaking less harmful. Consultation results in a Memorandum of Agreement (MOA).
4. Council comment. Agency submits the MOA to Advisory Council for review and acceptance.

5. Proceed. Agency may either proceed with the undertaking under the terms of the MOA or in the absence of an MOA proceed while taking into account the Council's comments.

Responsibility: The program office is responsible for compliance with the Section 106 review process.

8.3 Executive Orders

The last several presidents have used E.O.s as a means of exerting Presidential control over government-wide regulatory programs.

8.3.1 Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights

E.O. 12630 (53 FR 8859, March 18, 1988) requires Federal agencies to review each proposed regulation to determine whether the regulation might result in the "taking" of private property for public use without using the power of eminent domain. Because the Federal Government could be required to pay just compensation to the property owner for any taking, the purpose of the review is to reduce the risk of any "undue or inadvertent burdens" on the public treasury. This E.O. describes in some detail "policies that have takings implications" and policies that do not. It also contains a list of general principles and criteria to guide an agency when implementing policies that have "takings" implications.

Responsibility. Each Federal agency is required to designate an official to be responsible for ensuring compliance with this order; HCC is responsible at the FHWA. OMB and the Attorney General have been given the overall responsibility for ensuring agency policies are consistent with the principles, criteria, and requirements of this E.O. If it is believed that a taking of private property may be involved, HCC should be consulted.

8.3.2 Executive Order 12866, Regulatory Planning and Review

E.O. 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), requires that agencies assess both costs and benefits (quantitative and qualitative) of an intended regulation and propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. The order states that in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits. The order also encourages the use of consensual mechanisms for developing regulations, including negotiated rulemaking. It also gives OMB the authority to review significant rulemaking actions. All OMB comments and/or revisions to a significant rulemaking must be documented and placed in the docket showing the changes.

Significant Rule. Under E.O. 12866, a significant rule is one that is likely to result in one or more of the following:

1. Affect the economy by \$100 million or more annually;
2. Adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
3. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
4. Materially alter the budgetary impact of entitlements, grants, or user fees or loan programs or the rights and obligations of recipients thereof; or
5. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Agenda. E.O. 12866 requires that each agency publish a Unified Regulatory Agenda of its regulations under development or review, which may be combined with the agenda required under the RFA (5 U.S.C. 602). HCC is responsible for preparing this listing.

Responsibility. The program office is responsible for assessing costs and benefits of proposed and final regulations under this E.O.

Regulatory Planning. E.O. 12866 calls for an annual regulatory plan of the most important significant regulatory actions the agency reasonably expects to issue in proposed or final form for that fiscal year or thereafter. The regulatory plan is prepared by HCC and is published in October as part of the Unified Regulatory Agenda.

8.3.3 Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

E.O. 12898, as well as the President's February 11, 1994 Memorandum on Environmental Justice (sent to the heads of all departments and agencies), are intended to ensure that Federal departments and agencies identify and address disproportionately high and adverse human health or environmental effects of their policies, programs and activities on minority populations and low-income populations. The DOT Environmental Justice Order 56910.2 is a key component of DOT's June 21, 1995 Environmental Justice Strategy (60

FR 33896). DOT Order 5610.2 sets forth a process by which DOT and its Operating Administrations will integrate the goals of the Executive Order into their operations. This is to be done through a process developed within the framework of existing requirements, primarily the National Environmental Policy Act (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and other DOT applicable statutes, regulations and guidance that concern planning; social, economic, or environmental matters; public health or welfare; and public involvement. See FHWA Order, FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

8.3.4 Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

E.O. 13045 (62 FR 19885, April 23, 1997) requires Federal agencies to identify and assess environmental health and safety risks that may disproportionately affect children. The order states that these risks occur because--

1. Children's neurological, immunological, digestive, and other bodily systems are still developing;
2. Children eat more food, drink more fluids, and breathe more air in proportion to their body weight than adults;
3. Children's size and weight may diminish their protection from standard safety features; and
4. Children's behavior patterns may make them more susceptible to accidents because they are less able to protect themselves.

Under this order, each agency must ensure its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health or safety risks.

Covered Regulatory Action. This order applies to any covered regulatory action. A covered regulatory action is a rulemaking likely to result in a rule that may--

1. Be economically significant under E.O. 12866, and

2. Concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children.

Therefore, for each covered regulatory action the FHWA submits to OMB for review under E.O. 12866, the FHWA must provide--

1. An evaluation of the environmental health or safety effects of the planned regulation on children; and
2. An explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the FHWA.

This evaluation may be included as part of another required analysis such as a regulatory evaluation or regulatory analysis. A determination that a regulatory action is not covered need not be placed in the preamble.

Responsibility. The program office is responsible for identifying and assessing potential health and safety risks to children.

8.3.5 Executive Order 13084, Consultation With Indian Tribal Governments

E.O. 13084, (63 FR 27655, May 13, 1998) prohibits Federal agencies from issuing regulations that are not required by statute, that significantly or uniquely affect the communities of Indian tribal governments, and that impose substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the Federal agency consults with those governments. If the Federal agency complies by consulting, E.O. 13084 requires the agency to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the agency's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the agency to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

8.3.6 Executive Order 13132, Federalism

E.O. 13132, issued August, 1999, states that federal regulations may preempt state and local laws and rules only when Congress expressly dictates they do so or gives the executive agency clear authority to supersede state and local government. It specifies that

where state rules directly conflict with federal law, the latter shall be supreme. The order also gives the Office of Management and Budget authority to enforce it by rejecting major proposed regulations that lack a federalism "impact statement" or have been written without consultation with state and local officials. The executive order also makes it easier for state and local governments to get waivers from federal rules and requires federal officials to defer to states whenever possible.

8.4 DOT Policies

8.4.1 DOT Order 2100.2, Policies for Public Contacts in Rulemaking

Under DOT Order 2100.2 (October 5, 1970), the DOT sets policies for contacts with the public that occur during the rulemaking process for FHWA rules. See Section 7.3 Ex Parte Contacts for detailed information on public contacts in rulemaking.

8.4.2 DOT Order 2100.5, Policies & Procedures for Simplification, Analysis, & Review of Regulations

Under DOT Order 2100.5, (May 22, 1980), the DOT adopted policies that require a regulatory analysis for rules that meet the criteria of paragraph 11 a of the order and a regulatory evaluation of all other rules. The primary difference between a regulatory analysis and regulatory evaluation is that an analysis identifies and evaluates alternative approaches that have been considered, while a regulatory evaluation need only analyze the regulatory action proposed or being taken.

Responsibility. At the FHWA, these analyses or evaluations are performed by the program office, which considers the economic costs and benefits of each proposed and final regulation.

Significant Regulation. DOT Order 2100.5 requires that "significant" regulations be submitted to OST for concurrence. In paragraph 6a, it defines a "significant regulation" as follows:

Significant regulation means a regulation that is not an emergency regulation and that, in the judgment of the head of the initiating office, or the Secretary, or the Deputy Secretary--

1. Requires a regulatory analysis under paragraph 11a of DOT Order 2100.5 or is otherwise costly;
2. Concerns a matter on which there is substantial public interest or controversy;

3. Has a major impact on another operating administration or other parts of the DOT or another Federal agency;
4. Has a substantial effect on State and local governments;
5. Has a substantial impact on a major transportation safety problem;
6. Initiates a substantial regulatory program or change in policy;
7. Differs substantially from international requirements or standards; or
8. Otherwise involves important DOT policy.

Regulatory Analysis Required. Paragraph 11a of the order requires the initiating office to prepare and place in the public docket a draft regulatory analysis for each proposed regulation that will--

1. Result in an annual effect on the economy of \$100 million or more;
2. Result in a major effect on the general economy in terms of costs, consumer prices, or production;
3. Result in a major increase in costs or prices for individual industries, levels of government, or geographic regions;
4. Have a substantial impact on the U.S. balance of trade; or
5. Be the result of the Secretary or head of the initiating office determining a need for such analysis.

All regulations meeting the criteria of paragraph 11a of DOT Order 2100.5, and therefore requiring a regulatory analysis, are significant. But not all "significant" regulations as defined in paragraph 6a of the order meet paragraph 11a criteria. In that case, only a regulatory evaluation is required to be prepared.

Statement. Each rulemaking document must include a statement about the agency's finding as to whether the rule is significant under the order.

Docket. The regulatory analysis or regulatory evaluation must be included in the docket. ANPRM and NPRM documents must inform the public how to obtain the analysis or evaluation. If the expected impact is so minimal it does not warrant a full evaluation, a statement to that effect and the basis for that finding must be included in the rule document.

Emergency Regulation. For significant emergency regulations, the initiating office is responsible for placing a regulatory analysis or regulatory evaluation in the docket as soon as possible after the rule is issued. Nonsignificant emergency regulations do not need an evaluation.

1. An emergency regulation under DOT Order 2100.5 means a regulation that--
 - In the judgment of the head of the initiating office, circumstances require the regulation to be issued without notice and comment or made effective in less than 30 days after publication in the Federal Register, or
 - Is governed by a short-term statutory or judicial deadline.
2. A nonsignificant regulation is a regulation that in the judgment of the head of the initiating office, is neither a significant nor an emergency regulation.

APPENDIX A – ASSIGNMENT OF REGULATORY RESPONSIBILITIES

This table shows the office responsible for developing additions or amendments to 23 CFR Parts 1 - 1275. Any questions about these assignments should be forwarded to HCC.

Part	Title	Responsible Office
1	General	HAD
140	Reimbursement	HAD
172	Administration of engineering and design related service contracts	HIF
180	Credit assistance for surface transportation projects	HAD
190	Incentive payments for controlling outdoor advertising on the interstate system	HAD
192	Drug offender's driver's license suspension	HAD
200	Title VI program and related statutes—implementation and review procedures	HCR
230	External programs	HCR
260	Education and training programs	HCR
420	Planning and research program administration	HRT
450	Planning assistance and standards	HEP
460	Public road mileage for apportionment of highway safety funds	HAD
470	Highway systems	HIF
476	Interstate highway system	HIF
500	Management and monitoring systems	HEP
511	[Reserved]	
620	Engineering	HIF
625	Design standards for highways	HIF
626	Pavement policy	HIF
627	Value engineering	HIF
630	Preconstruction procedures	HIF
633	Required contract provisions	HIF
635	Construction and maintenance	HIF
637	Construction inspection and approval	HIF
640	Certification acceptance	HIF

645	Utilities	HIF
646	Railroads	HIF
650	Bridges, structures, and hydraulics	HIF
652	Pedestrian and bicycle accommodations and projects	HIF
655	Traffic operations	HOP
656	Carpool and vanpool projects	HEP
657	Certification of size and weight enforcement	HOP
658	Truck size and weight, route designations—length, width and weight limitations	HOP
660	Special programs (Direct Federal)	HFL
661	Indian reservation road bridge program	HFL
667	[Reserved]	
668	Emergency relief program	HIF
669	Enforcement of heavy vehicle use tax	HIF
710	Right-of-way and real estate	HEP
750	Highway beautification	HEP
751	Junkyard control and acquisition	HEP
752	Landscape and roadside development	HEP
771	Environmental impact and related procedures	HEP
772	Procedures for abatement of highway traffic noise and construction noise	HEP
777	Mitigation of environmental impacts to privately owned wetlands	HEP
810	Mass transit and special use highway projects	HIF
924	Highway safety improvement program	HIF
CHAPTER II		
1200	Uniform procedures for State highway safety programs	HMHS
1204	[Reserved]	HMHS
1205	Highway safety programs; determinations of effectiveness	HMHS
1206	Rules of procedure for invoking sanctions under the Highway Safety Act of 1966	HMHS
1208	National minimum drinking age	HMHS
1210	Operation of motor vehicles by intoxicated minors	HMHS
1215	Use of safety belts--compliance and transfer-of-funds procedures	HMHS
1225	Operation of motor vehicles by intoxicated persons	HMHS

1235	Uniform system for parking for persons with disabilities	HMHS
1240	Safety incentive grants for use of seat belts—allocations based on seat belt use rates	HMHS
1250	Political subdivision participation in State highway safety programs	HMHS
1251	State highway safety agency	HMHS
1252	State matching of planning and administration costs	HMHS
1270	Open container laws	HMHS
1275	Repeat intoxicated driver laws	HMHS

APPENDIX B – WEB SITES FOR RELEVANT STATUTES, EXECUTIVE ORDERS, AND OTHER RULEMAKING DOCUMENTS

1. A Guide to Federal Agency Rulemaking
<http://www.abanet.org/adminlaw/5400001.html>

2. ACUS Recommendations
<http://www.law.fsu.edu/library/admin/acus/acustoc.html>

3. Administrative Procedure Act (APA)
<http://www4.law.cornell.edu/uscode/5/ch5.text.html>

4. Attorney General's Manual on the Administrative Procedure Act
<http://www.law.fsu.edu/library/admin/1947cover.html>

5. DMS Web Site
<http://dms.dot.gov>

6. DOT Order 2100.2, Policies for Public Contacts in Rulemaking
<http://www.reg-group.com/DOT2100-2.pdf>

7. DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations
<http://www.reg-group.com/DOT2100-5.pdf>

8. E.O. 11246, Equal Employment Opportunity
<http://www.reg-group.com/EO11246.html>

9. E.O. 12630, Property Rights
<http://www.reg-group.com/EO12630.html>
10. E.O. 12866, Regulatory Planning and Review
<http://www.reg-group.com/EO12866.html>
11. E.O. 12898, Federal Actions to address Environmental Justice in Minority Populations and Low-Income Populations
<http://www.reg-group.com/EO12898.html>
12. E.O. 12962, Recreational Fisheries
<http://www.reg-group.com/EO12962.html>
13. E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks
<http://www.reg-group.com/EO13045.html>
14. E.O. 13084, Consultation with Indian Tribal Governments
<http://www.reg-group.com/EO13084.html>
15. E.O. 13132, Federalism
<http://www.reg-group.com/EO13132.html>
16. Federal Register
<http://www.access.gpo.gov/aces/aces140.html>
(on-line version)
17. Federal Register Act (44 U.S.C. 1501-1511)
<http://www.nara.gov/fedreg/legal/index.html>
18. Federal Register Document Drafting Handbook
<http://www.nara.gov/fedreg/ddhome.html>

19. FHWA Environmental Guidebook
<http://www.fhwa.dot.gov/environment/guidebook/contents.htm>
20. FHWA Technical Advisory T 6640.8A
<http://www.fhwa.dot.gov/legsregs/directives/techadvs/t664008a.htm>
21. Government Printing Office
<http://www.access.gpo.gov>
22. Negotiated Rulemaking Act (5 U.S.C. 561-570)
<http://www.nara.gov/fedreg/legal/index.html>
23. Paperwork Reduction Act (44 U.S.C. 3501-3520)
<http://www.nara.gov/fedreg/legal/index.html>
24. Part 51 of Title I of the CFR
<http://www.reg-group.com/1CFR51.pdf>
25. Plain Language Action Network
<http://www.plainlanguage.gov>
26. Regulatory Flexibility Act (RFA 5 U.S.C. 601-612)
<http://www.sba.gov/advo/laws/regflex.html>
27. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)
http://www.sba.gov/advo/laws/sum_sbrefa.html
28. Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501-1571)
<http://www.sba.gov/advo/laws/unfund.pdf>