

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Part 973**

[FHWA Docket No. FHWA-99-4968]

RIN 2125-AE53

**Federal Lands Highway Program; Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The Transportation Equity Act for the 21st Century (TEA-21), requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway program (FLHP). The Secretary of Transportation has delegated the authority to the FHWA to serve as the lead agency within the U.S. DOT to implement the FLHP. The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities providing access to Indian lands and funded under the FLHP.

**DATES:** Comments must be received on or before March 10, 2003.

**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 between 9 a.m. and 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:** Mr. Bob Bini, Federal Lands Highway, HFPD-2, (202) 366-6799, FHWA, 400 Seventh Street, SW., Washington, DC 20590; office hours are from 7:45 a.m. to

4:15 p.m., e.t., Monday through Friday, except Federal holidays. For legal questions, Ms. Vivian Philbin, HFL-16, (303) 716-2122, FHWA, 555 Zang Street, Lakewood, CO 80228. Office hours are from 7:45 a.m. to 4:15 p.m., m.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): <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 be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's Web Page at: <http://www.access.gpo.gov/nara>.

**Background**

Section 1115(d) of the TEA-21 (Pub. L. 105-178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204 to require the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. A management system is a process for collecting, organizing, and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods.

The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. The Secretary of Transportation delegated to the FHWA the authority to serve as the lead agency within the U.S. Department of Transportation to administer the FLHP (see 49 CFR 1.48 (b)(29)). This rulemaking action

addresses the management systems for the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads (IRR) program.

On September 1, 1999, the FHWA issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments concerning development of this proposed rule pertaining to the BIA and the IRR program (64 FR 47746). The ANPRM requested comments on the feasibility of developing a rule to meet both the transportation planning and management systems requirements of the TEA-21. Therefore, comments made to the docket addressed both transportation planning and management systems issues. However, the FHWA has decided to publish separate NPRMs for transportation planning and management systems. For this reason, this NPRM concerns only the development of the management systems. This NPRM includes responses to the comments submitted to the docket on the ANPRM that addressed the proposed development of the four management systems. Those comments on the ANPRM that addressed transportation planning will be addressed at a later date. The FHWA received comments addressing the management systems from various State DOT's, Tribal representatives from the Indian Reservation Roads Program Negotiated Rulemaking Committee (Committee), the United South and Eastern Tribes, Inc. (USET), and an intertribal council of twenty-three federally recognized Tribes (Council). These comments are summarized in the following section. Specific comments may be obtained by reviewing the materials in the docket.

Pursuant to Executive Order 13175 (Tribal Consultation), the FHWA has participated in a number of consultation sessions on this rulemaking with numerous Tribal government representatives. The purpose of these sessions was to explain the FHWA's intent in developing the NPRM, as well as to seek input and feedback. To the extent feasible, the FHWA will continue to use the Committee and other key Tribal transportation meetings to consult and coordinate with the (Indian Tribal Governments) ITGs on this rulemaking throughout the remainder of the process. In addition, the FHWA will hold seven informational meetings during the comment period in the following locations at a date and time to be announced in the **Federal Register**: Albuquerque, NM; Anchorage, AK; Minneapolis, MN; Nashville, TN; Portland, OR; Las Vegas, NV; and Tulsa, OK. These meetings will be used to provide an overview of the rulemaking

process and describe FHWA's purpose and intent in developing the rules. Tribal representatives are encouraged to attend these meetings and to provide suggestions and comments.

Based on the comments we received on the ANPRM and during Tribal consultations, the FHWA has developed this NPRM to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities providing access to Indian lands and funded under the FLHP. Separate NPRM's on management systems have also been developed for the National Park Service (NPS) and the Park Roads and Parkways program, the Fish and Wildlife Service (FWS) and the Refuge Roads program, and the Forest Service (FS) and the Forest Highway program. The other three related NPRM's are published elsewhere in today's **Federal Register**.

On April 21, 2000, then President Clinton issued Executive Order (EO) 13148, Greening the Government Through Leadership in Environmental Management. This EO requires all Federal agencies to implement an environmental management system (EMS) to ensure that agencies develop strategies to support environmental leadership in programs, policies, and procedures and that senior level managers explicitly and actively endorse these strategies. The EO requires that agencies implement an EMS no later than December 31, 2005. Furthermore, in an April 1, 2002, letter, the Bush Administration encouraged all agencies to promote the use of EMS in Federal, State, local, and private facilities and directed the Environmental Protection Agency (EPA) to report annually on how well each agency has done in promoting EMS.

The FHWA has already begun working toward establishing an EMS. Additionally, the FHWA is working with the American Association of State Highway and Transportation Officials' (AASHTO) Center for Environmental Excellence to include EMS as part of an environmental stewardship demonstration project. The FHWA is currently providing technical and financial assistance to the Center, which in turn supports States that have initiated EMSs.<sup>1</sup> Furthermore, the FHWA continues to demonstrate environmental stewardship by encouraging the use of EMS in the

construction, operation, and maintenance of transportation facilities.

Although an EMS may have some overlap with the four management systems that are the subject of this proposed rulemaking, the FHWA has decided not to incorporate the EMS in this rulemaking. The FHWA believes that great progress has been made on the EMS and promoting the use of EMS by the States. In addition, the FHWA has a long-standing working relationship with the Federal Land Management Agencies (FLMAs) through the Federal Lands Highway Program. The natural resource conservation and preservation missions of these agencies have led to the development of a jointly held environmental ethic that pervades transportation project decision-making through the use of context sensitive design, best management practices, and a heightened sensitivity to environmental impacts. This relationship provides a strong foundation for the FHWA to encourage the use of environmental management systems by the FLMAs. For example, the National Park Service currently has an initiative underway to implement a service-wide EMS approach. The FHWA and the NPS can evaluate ways to coordinate the use and development of the EMS with the transportation management systems through the joint development of the management system implementation plan called for in this rulemaking. A similar approach can be used with all of the FLMAs.

Any EMS developed by the FHWA, or by a FLMA, will not have an adverse effect on any of the management systems in this proposed rulemaking. Instead, such an EMS may help foster a movement toward the use of a comprehensive asset management system that incorporates EMS, along with the transportation management systems proposed in this rulemaking, and others not covered in this proposed action, such as a maintenance management system. The role of the EMS in a more comprehensive approach would demonstrate a commitment to environmental stewardship that goes beyond the individual project level or the development of a multi-project transportation program. The EMS should be a fundamentally important business tool that pervades all aspects of FLMA transportation decision-making. The FHWA will continue to advance its EMS and promote the EMS initiatives of the FLMAs through implementation planning for the transportation management systems. In addition, the FHWA will continue to promote the use of EMSs in the construction, operation,

and maintenance of transportation facilities.

In developing the management system implementation plans, the need for data elements that address the environmental performance measures can be evaluated in relationship to individual agency plans to implement an EMS. This could provide an opportunity for the ongoing collection of environmental information, if appropriate and necessary. At a minimum, this would provide an opportunity to link existing environmental data to the transportation management systems using a geographic information system common to both systems.

From the FHWA's stewardship perspective regarding the Federal Lands Highway Program, EMS is most appropriately pursued as part of sound FLMA business management planning. Thus, the FHWA has decided not to address the EMS requirement in this proposed rulemaking action.

#### **Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program**

The following discussion summarizes the comments received on the ANPRM and the FHWA's response to these comments. This discussion provides the public a general sense of the issues addressed in the comments. As previously stated, this NPRM is intended for the development of management systems. Therefore, this summary contains only comments and responses related to the management systems. There are instances where reference is made to transportation planning issues because the management systems serve as a guide to planning activities.

#### *Rule Development*

*Comments:* The majority of comments supported the FHWA's proposal to develop "separate rules" pertaining to the BIA and the Indian Reservations Roads program, the FWS and the Refuge Roads program, the NPS and the Park Roads and Parkways program, and the FS and the Forest Highway program. The commenters in favor of this proposal pointed out the fact that transportation planning functions for the different Federal lands highways are performed by various Federal, State, and local entities, depending on ownership of the roadways and responsibilities for constructing and maintaining the facilities.

The Wisconsin DOT and the Kentucky Transportation Cabinet offered an opposite view. These two State Transportation Departments requested that we develop only one

<sup>1</sup> More information on how EMS applies to transportation organizations can be found on the AASHTO's Center for Environmental Excellence Web site at the following URL: <http://itre.ncsu.edu/AASHTO/stewardship>.

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

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

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

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

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

#### *Addressing the Management Systems Requirements*

*Comments:* Many States believe that the management systems should only be developed as needed and should relate to systems that are already implemented by States and local agencies. It was recommended that the FHWA encourage the Federal agencies to explore and use the States' existing systems. The States also recommended the systems be tailored to fit local conditions, and be applicable solely to the portion of the Federal lands highways owned and maintained by Federal agencies. Many of the States are concerned that the implementation of the management systems may affect the current working relationships among State, local, and Federal agencies. The Wisconsin DOT encouraged the FHWA to work with the FLMAs and State Transportation Departments to clarify ownership discrepancies between Federal and State data. They suggested that the FLMAs have accurate data reflecting the amount of mileage the agencies own by location. Further, these data have to agree with data reported by States in the Highway Performance Monitoring System (HPMS) database.<sup>3</sup>

*Response:* The stakeholders' concerns presented above were considered in the development of this NPRM. Each of the proposed management system rules calls for the FHWA, in cooperation with the FLMA, to develop an implementation plan or implementation procedures for each of the management systems. In addition, flexibility is provided to determine criteria for the need and applicability of each of the FLMA's management systems. These implementation plans will provide the opportunity to relate the FLMA management systems to systems already implemented by States and local agencies. It will also allow the management systems to be tailored to fit a broad range of local conditions, and to avoid inefficient duplication of

management systems already in use by the States. Development of the implementation plans will provide an opportunity to strengthen the working relationships among Federal, State, Tribal and local agencies, as well as define responsibility for and ownership of data.

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

*Response:* While it is correct that the Public Law 104-59 made the management systems optional for States and Metropolitan Planning Organizations (MPOs), except for the congestion management systems in MPOs with a population of greater than 200,000, section 1115(d) of TEA-21 applies to the Federal land management agencies, not directly to the States; however, the States may be requested to provide information. The TEA-21, enacted on June 9, 1998, amended 23 U.S.C. 204 to specify that "The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program." Therefore, the development and implementation of the management systems, where appropriate, is mandated by law for the Federal land management agencies.

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

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

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

##### *Subpart A*

##### *Section 973.100 Purpose*

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

##### *Section 973.102 Applicability*

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

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

<sup>3</sup> "The HPMS was developed in 1978 as a national highway transportation system database. It includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional system, and certain summary information for urbanized, small urban and rural areas. Additional information about this database is available online at the URL: <http://www.fhwa.dot.gov/ohim>.

### Section 973.104 Definitions

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

The phrase "Indian lands" would be added to the definitions of "bridge management system (BMS)," "congestion management system (CMS)," "pavement management system (PMS)," and "safety management system (SMS)" to indicate the distinction between the Indian lands, Federal lands and Federal-aid management systems (refer to 23 CFR part 500 for definitions of the Federal-aid management systems). The NPRMs for the FS, FWS and NPS would use the phrase "Federal lands" to indicate the distinction between the Federal lands, Indian lands and Federal-aid management systems. The management system definitions also specify their applicability to the BIA, FS, FWS and NPS, as appropriate.

#### Subpart B

### Section 973.200 Purpose

This section states the purpose of this proposed rule, which is to fulfill the requirements set forth by the TEA-21.

### Section 973.202 Applicability

This section defines the applicability of the management systems.

### Section 973.204 Management Systems Requirements

This section sets forth general requirements for all four management systems. Additional requirements applicable to specific systems are in §§ 973.208 through 973.214.

Paragraph (a) states that the BIA shall develop, establish, and implement the nationwide management systems. Paragraphs (a) and (h) provide flexibility in the development of the nationwide management systems. Paragraph (b) requires the FHWA and the BIA to develop implementation plans for the nationwide management systems.

Paragraph (c) states that a Tribe may develop, establish, and implement Tribal management systems.

Paragraph (d) directs the BIA, in consultation with the Tribes, to develop criteria for cases in which Tribal management systems are not appropriate.

Paragraph (e) directs the BIA or Tribes, as appropriate, to incorporate data provided by States and local governments in the nationwide or Tribal management systems for State and locally owned IRRs.

To ensure the management systems are developed, implemented, and

operated systematically, paragraph (f) requires the development of procedures that will include the following: Consideration of management system results in the planning process; system analysis; a description of each management system; operation and maintenance of management systems and databases; and data collection, processing, analysis, and updating. Paragraph (g) ensures that the database has a geographical reference system so that information can be geolocated. Paragraph (h) encourages the use of existing data sources to the maximum extent possible.

Paragraph (i) states that a nationwide congestion management system is not required. The BIA and the FHWA, in consultation with the Tribes, will develop criteria to determine when congestion management systems are required for specific BIA transportation facilities. The BIA or the Tribe may develop, establish and implement the congestion management systems when they are required.

Paragraph (j) requires a periodical evaluation process of the effectiveness of the management systems, preferably as part of the transportation planning process. Paragraph (k) ensures that transportation investment decisions based on management system results would be used at the BIA region or Tribal level and can be used throughout the transportation planning process.

### Section 973.206 Funds for Establishment, Development, and Implementation of the Systems

This section provides that the funds available for the IRR program can be used for development, establishment, and implementation of the nationwide and required congestion management systems in accordance with legislative provisions for the funds.

### Section 973.208 Indian Lands Pavement Management System (PMS)

Paragraph (a) defines the applicability of the PMS. Paragraph (b) requires Tribes that collect data for a PMS to provide the data to the BIA to be used in the nationwide PMS. Paragraph (c) recommends the use of the American Association of State Highway and Transportation Officials' (AASHTO) "Pavement Management Guide"<sup>4</sup> as a guide for the development of the PMS.

<sup>4</sup> "Pavement Management Guide," AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at <http://www.transportation.org/publications/bookstore.nsf> or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090-6716.

Paragraph (d) provides flexibility for the development of the PMS.

This section further sets forth processes and procedures that must be included in a PMS. They include requirements for a basic framework composed of data collection and maintenance, network level analysis, and reporting procedures.

### Section 973.210 Indian Lands Bridge Management System (BMS)

Paragraph (a) defines the applicability of the BMS. Paragraph (b) requires Tribes that collect data for a BMS to provide the data to the BIA to be used in the nationwide BMS. Paragraph (c) recommends the use of the AASHTO's "Guidelines for Bridge Management Systems"<sup>5</sup> as a guide for the development of BMS.

The section sets forth components that must be included in a BMS. They consist of data collection and maintenance, analysis procedures, and reporting procedures.

### Section 973.212 Indian Lands Safety Management System (SMS)

Paragraph (a) defines the applicability of the SMS. Paragraph (b) requires Tribes that collect data for a SMS to provide the data to the BIA to be used in the nationwide SMS. Paragraph (c) encourages the use of the FHWA publication entitled "Safety Management Systems: Good Practices for Development and Implementation."<sup>6</sup>

Because of the strong emphasis the TEA-21 has on safety, paragraph (d) requires the SMS to be used to ensure that safety is considered and implemented as appropriate in all phases of transportation planning, programming and project implementation. Paragraph (e) states that the level of complexity of the nationwide and Tribal SMS's depends on the nature of the facilities involved.

The section sets forth the components that must be included in a SMS. They include data collection and maintenance, identification and

<sup>5</sup> "Guidelines for Bridge Management Systems," AASHTO, 1993, is available for inspection as prescribed at 49 CFR part 7. It may be purchased on line at <http://www.transportation.org/publications/bookstore.nsf> or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090-6716.

<sup>6</sup> "Safety Management Systems: Good Practices for Development and Implementation," FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at <http://safety.fhwa.dot.gov/media/documents.htm>. It is available for inspection and copying as prescribed at 49 CFR part 7.

correction of potential safety problems, communications, public education, training needs, and reporting.

To provide flexibility, paragraph (g) states that the extent of SMS requirements set forth in this proposed rule for low volume roads may be tailored to be consistent with the functional classification of the roads. However, each functional classification should include adequate requirements to ensure effective safety decisionmaking.

#### *Section 973.214 Indian Lands Congestion Management System (CMS)*

Paragraph (b)(1) requires the BIA and the FHWA, in consultation with the Tribes, to develop criteria for determining when a CMS will be required for a specific transportation system.

Paragraph (b)(2) further sets forth the components to be included in a CMS. They include the following: Identification and documentation of measures for congestion; identification of the causes of congestion; development of evaluation processes; identification of benefits; determination of methods to monitor and evaluate performance of the overall transportation system after strategies are implemented; and consideration of example strategies provided in the proposed rule.

#### **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 using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested 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 U.S. DOT Regulatory Policies and Procedures**

The FHWA has determined preliminarily that the proposed rule would be a significant regulatory action within the meaning of Executive Order 12866, and under the regulatory policies and procedures of the U.S. Department of Transportation, because of the substantial public interest anticipated in

the transportation facilities of the Indian lands. The FHWA anticipates that the economic impact of any action taken in this rulemaking process will be minimal. The FHWA anticipates that the proposed changes will not adversely affect any sector of the economy in a material way. Though the proposed action will impact the BIA, it will not likely interfere with any action taken or planned by the BIA or another agency, or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this proposed action, 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 proposal described in this document or any alternative proposal submitted.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (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 not have a significant economic impact on a substantial number of small entities. Commenters are encouraged to evaluate any options addressed here with regard to the potential for impact.

#### **Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose a mandate that requires further analysis under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and Tribal Governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532). This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation systems providing access to and within Indian lands. These roads are funded under the FLHP; therefore, the proposed rule is not considered an unfunded mandate. 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 effects on State, local, and Tribal Governments and the private sector.

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

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order

13132, dated August 4, 1999. The FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that the proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. However, commenters are encouraged to consider these issues, 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 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (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 proposed rule contains a requirement for data and information to be collected and maintained in the four management systems that are to be developed. In order to streamline the process, the FHWA intends to request that the OMB approve a single information collection clearance for all of the data in the four management systems at the time that the requirements in this proposal are made final. The FHWA is sponsoring this proposed clearance on behalf of the Bureau of Indian Affairs.

The FHWA estimates that a total of 5,600 burden hours per year would be imposed on non-Federal entities to provide the required information for the BIA management systems. Respondents to this information collection include State Transportation Departments, Metropolitan Planning Organizations, Tribal governments, regional transportation planning agencies, and county and local governments. The BIA would bear the burden of developing the management systems in a manner that would incorporate any existing data in the most efficient way and without additional burdens to the public. The estimates here only include burdens on the respondents to provide information

that is not usually and customarily collected.

Where a substantial level of effort may be required of non-Federal entities to provide BIA management system information, the effort has been benchmarked to the number of miles of State, local or Tribally owned roads or the number of State, local or Tribally owned bridges within the BIA's jurisdiction. This approach has been applied to the PMS, BMS and SMS. For BIA implementation of the PMS, BMS, and SMS, the total annual burden estimate is 3,600 of the 5,600 hours per year. The level of burden on non-Federal entities for these management systems is modest since the agency will incorporate existing data into the system. Of these three systems, the most substantial burden is associated with the collection of data to implement the BMS. The BMS burden is estimated at 1,400 hours per year. The PMS and SMS burdens are estimated at 1,100 hours per year for each of these management systems.

For the CMS, the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the BIA to coordinate its management system with the MPOs, for those limited instances when a portion of its transportation system is within an MPO area. For estimating purposes, approximately 50 MPOs nationwide may be burdened by the proposed regulation. Forty hours of burden were assigned to each of the 50 MPOs, resulting in a total burden of 2000 hours attributable to the CMS.

The FHWA is required to submit this proposed collection 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 collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

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

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

impact statement is, therefore, not required.

#### **Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this proposed action under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000, and believes that the proposal will have substantial direct effects on one or more Indian Tribes.

##### *Section 5 (b) of Executive Order 13175 states:*

To the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless:

(1) Funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government; or

(2) The agency, prior to formal promulgation of the regulation,

(A) Consulted with Tribal officials early in the process of developing the proposed regulation.

The Executive Order states similar requirements for any regulation that has Tribal implications and preempts Tribal law.

As stated previously, this rulemaking is statutorily required under section 1115(d) of the TEA-21. While there are no specific additional dedicated funds for implementing this regulation, funds already available under the IRR program can be used for the development, establishment, and implementation of the management systems. The FHWA has utilized key Tribal transportation meetings to consult and coordinate with Indian Tribal Governments on this rulemaking since its inception. At these meetings, the FHWA advised the Tribes of the ANPRM and encouraged them to submit comments and suggestions to the docket. In addition, after the docket was closed, the FHWA shared with them all comments submitted to the docket, including those from State Transportation Departments questioning provisions of the IRR statute.

##### *Tribal Summary Impact Statement*

As stated earlier, the FHWA published an ANPRM on September 1, 1999, to solicit public comments concerning development of this proposed rule pertaining to the BIA and the IRR program (64 FR 47746). Among the comments the FHWA received are the comments from the Tribal representatives to the Indian Reservation Roads Program Negotiated Rulemaking Committee, the United South and Eastern Tribes, Inc., and an intertribal council of twenty-three

federally recognized Tribes. These comments are summarized in the section entitled "Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program." Specific comments may be obtained by reviewing the materials in the docket.

Pursuant to Executive Order 13175, during the development process of this NPRM, the FHWA participated in a number of consultation sessions on this rulemaking with numerous Tribal government representatives. The purpose of these sessions was to explain the FHWA's intent in developing the NPRM, as well as to seek input and feedback. These discussions were scheduled agenda items with time provided for questions and answers and took place at the following events: The "Transportation Improvements: Experiences Among Tribal, Local, State, and Federal Governments Conference," Albuquerque, NM, October 2000; the "Annual Providers Conference," Anchorage, AK, November 2000; the "Intertribal Transportation Association Annual Meeting," Las Vegas, NV, December 2000; and the "Northern Plains Transportation Exposition," Aberdeen, SD, March 2001.

During these discussions, the Tribes addressed two major concerns. The first concern dealt with the funding for the establishment, development, and implementation of the management systems. As a response, § 973.206 of this proposed action states that the IRR program management funds may be used to conduct nationwide management systems activities. Additionally, the IRR two-percent Tribal transportation planning or construction funds may be used for Tribal management systems activities.

The second concern surrounded the Tribes' desire to utilize the IRR Negotiated Rulemaking in lieu of this proposed rule. This comment also was addressed to the ANPRM published on September 1, 1999. The FHWA responds to this comment in this NPRM in the "Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program" section. As the response indicates, the requirements for the management systems and the requirements for the IRR program are separate. However with the exception of funding, the language set forth in this NPRM is consistent with the draft language on management systems set forth in the IRR Negotiated Rulemaking Notice.

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

This proposed action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Executive Order 13045 (Protection of Children)**

We have analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not concern an environmental risk to health and safety that may disproportionately affect children.

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

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Executive Order 13211 (Energy Effects)**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because, although this proposed action is considered to be a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The 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 973**

Bridges, Grant programs—transportation, Highway safety, Highways and roads, Indians—Lands, Public lands. Transportation.

For reasons set forth in the preamble, the Federal Highway Administration proposes to amend chapter I of title 23, Code of Federal Regulations, as set forth below.

Issued on: December 20, 2002.

Mary E. Peters,

*Federal Highway Administrator.*

1. Add part 973 to read as follows:

**PART 973—BUREAU OF INDIAN AFFAIRS MANAGEMENT SYSTEMS****Subpart A—Definitions**

Sec.

- 973.100 Purpose.  
973.102 Applicability.  
973.104 Definitions.

**Subpart B—Bureau of Indian Affairs Management Systems**

- 973.200 Purpose.  
973.202 Applicability.  
973.204 Management systems requirements.  
973.206 Funds for establishment, development and implementation of the systems.  
973.208 Indian lands Pavement Management System (PMS).  
973.210 Indian lands Bridge Management System (BMS).  
973.212 Indian lands Safety Management System (SMS).  
973.214 Indian lands Congestion Management System (CMS).

**Authority:** 23 U.S.C. 204, 315, 42 U.S.C. 7410 *et seq.*; 49 CFR 1.48.

**Subpart A—Definitions****§ 973.100 Purpose.**

The purpose of this subpart is to provide definitions for terms used in this part.

**§ 973.102 Applicability.**

The definitions in this subpart are applicable to this part, except as otherwise provided.

**§ 973.104 Definitions.**

*Alternative transportation systems* means modes of transportation other than private vehicles, including methods to improve system performance such as transportation demand management, congestion management, and intelligent transportation systems. These mechanisms help reduce the use of private vehicles and thus improve overall efficiency of transportation systems and facilities.

*Elements* means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

*Federal Lands Highway program (FLHP)* means a federally funded program established in 23 U.S.C. 204 to address transportation needs of Federal and Indian lands.

*Indian lands bridge management system (BMS)* means a systematic process used by the Bureau of Indian Affairs (BIA) or Tribal governments for

analyzing bridge data to make forecasts and recommendations, and provides the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be efficiently considered.

*Indian lands congestion management system (CMS)* means a systematic process used by the BIA or Tribal governments for managing congestion that provides information on transportation system performance and alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet Federal, State and local needs.

*Indian lands pavement management system (PMS)* means a systematic process used by the BIA or Tribal governments that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventive maintenance programs and policies, and that results in pavement designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner.

*Indian lands safety management system (SMS)* means a systematic process used by the BIA or Tribal governments with the goal of reducing the number and severity of traffic accidents by ensuring that all opportunities to improve roadway safety are identified, considered, implemented and evaluated, as appropriate, during all phases of highway planning, design, construction, operation and maintenance by providing information for selecting and implementing effective highway safety strategies and projects.

*Indian reservation road* means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

*Indian Reservation Roads (IRR) program* means a part of the FLHP established in 23 U.S.C. 204 to address the transportation needs of federally recognized Indian Tribal Governments (ITG).

*Indian Reservation Roads transportation improvement program (IRRTIP)* means a multi-year, financially constrained list by year, State, and Tribe of IRR-funded projects selected by ITGs from Tribal TIP's, or other Tribal

actions, that are programmed for construction in the next 3 to 5 years.

*Indian Reservation Roads*

*transportation plan* means a document setting out a Tribe's long-range transportation priorities and needs. The IRR transportation plan, which can be developed by either the Tribe or the BIA on behalf of that Tribe, is developed through the IRR transportation planning process pursuant to 23 U.S.C. 204.

*Indian Tribal Government (ITG)*

means a duly formed governing body of an Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village, or Community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

*Life-cycle cost analysis* means an evaluation of costs incurred over the life of a project allowing a comparative analysis between or among various alternatives. Life-cycle cost analysis promotes consideration of total cost, to include maintenance and operation expenditures. Comprehensive life-cycle costs analysis includes all economic variables essential to the evaluation: Safety costs associated with maintenance and rehabilitation projects, agency capital cost, and life-cycle maintenance costs.

*Operations* means those activities associated with managing, controlling, and regulating highway traffic.

*Secretary* means the Secretary of Transportation.

*Serviceability* means the degree to which a bridge provides satisfactory service from the point of view of its users.

*State* means any one of the fifty States, the District of Columbia, or Puerto Rico.

*Transportation facilities* means roads, streets, bridges, parking areas, transit vehicles, and other related transportation infrastructure.

## Subpart B—Bureau of Indian Affairs Management Systems

### § 973.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 204 which requires the Secretary and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP.

### § 973.202 Applicability.

The provisions in this subpart are applicable to the Bureau of Indian Affairs (BIA) and the Indian Tribal Governments (ITGs) that are responsible

for satisfying these requirements for management systems pursuant to 23 U.S.C. 204.

### § 973.204 Management systems requirements.

(a) The BIA, in consultation with the Tribes, shall develop, establish and implement nationwide pavement, bridge, and safety management systems for Federally and Tribally owned IRR. The BIA may tailor the nationwide management systems to meet the agency's goals, policies, and needs.

(b) The BIA and the FHWA, in consultation with the Tribes, shall develop an implementation plan for each of the nationwide management systems. These plans will include, but are not limited to, the following: Overall goals and policies concerning the nationwide management systems, each agency's responsibilities for developing and implementing the nationwide management systems, implementation schedule, data sources, and cost estimate.

(c) Tribes may develop, establish, and implement Tribal management systems under a self-determination contract or self-governance annual funding agreement. The Tribe may tailor the management systems to meet its goals, policies, and needs.

(d) The BIA, in consultation with Tribes, shall develop criteria for cases in which Tribal management systems are not appropriate.

(e) The BIA, in consultation with Tribes, or the Tribes under a self-determination contract, shall incorporate data provided by States and local governments into the nationwide or Tribal management systems, as appropriate, for State and locally owned IRRs.

(f) The BIA, in consultation with the Tribes, shall develop and implement procedures for the development, establishment, implementation and operation of nationwide management systems. If a Tribe develops Tribal management systems, the Tribe shall develop and implement procedures for the development, establishment, implementation and operation of Tribal management systems. The procedures shall include:

(1) A description of each management system;

(2) A process to operate and maintain the management systems and their associated databases;

(3) A process for data collection, processing, analysis and updating for each management system;

(4) A process for ensuring the results of the management systems are considered in the development of IRR

transportation plans and transportation improvement programs and in making project selection decisions under 23 U.S.C. 204; and

(5) A process for the analysis and coordination of all management systems outputs to systematically operate, maintain, and upgrade existing transportation assets cost-effectively;

(g) All management systems shall use databases with a common or coordinated reference system that can be used to geolocate all database information.

(h) Existing data sources may be used by the BIA and Tribes to the maximum extent possible to meet the management system requirements.

(i) A nationwide congestion management system is not required. The BIA and the FHWA shall develop criteria for determining when congestion management systems are required for BIA or Tribal transportation facilities providing access to and within the Indian reservations. Either the Tribes or the BIA, in consultation with the Tribes, shall develop, establish and implement congestion management systems for the transportation facilities that meet the criteria.

(j) The BIA shall develop an appropriate means to evaluate the effectiveness of the management systems in enhancing transportation investment decisions and improving the overall efficiency of the affected transportation systems and facilities. This evaluation is to be conducted periodically, preferably as part of the BIA planning process.

(k) The management systems shall be operated so investment decisions based on management system outputs can be accomplished at the BIA region and Tribal level and can be utilized throughout the transportation planning process.

### § 973.206 Funds for establishment, development, and implementation of the systems.

The IRR program management funds may be used to accomplish nationwide management system activities. For Tribal management system activities, the IRR two percent Tribal transportation planning or construction funds may be used. (Refer to 23 U.S.C. 204(b) and 204(j)). These funds are to be administered in accordance with the procedures and requirements applicable to the funds.

### § 973.208 Indian lands Pavement Management System (PMS).

In addition to the requirements provided in § 973.204, the PMS must meet the following requirements:

(a) The BIA shall have a PMS for all federally and Tribally owned IRRs included in the IRR inventory.

(b) Where a Tribe collects data for the Tribe's PMS, the Tribe shall provide the data to the BIA to be used in the nationwide PMS.

(c) The nationwide and Tribal PMSs may be based on the concepts described in the AASHTO's "Pavement Management Guide."<sup>1</sup>

(d) The nationwide and Tribal PMSs may be utilized at various levels of technical complexity depending on the nature of the pavement network. These different levels may depend on mileage, functional classes, volumes, loading, usage, surface type, or other criteria the BIA and ITGs deem appropriate.

(e) A PMS shall be designed to fit the BIA's or Tribes' goals, policies, criteria, and needs using the following components, at a minimum, as a basic framework for a PMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the PMS. The minimum PMS database shall include:

(i) An inventory of the physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information;

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance. If some of the inventory or historic data is difficult to establish, it may be collected when preservation or reconstruction work is performed;

(iii) A condition survey that includes ride, distress, rutting, and surface friction (as appropriate);

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) Data for estimating the costs of actions.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all federally and Tribally owned IRR in the inventory or any subset. The minimum analyses shall include:

(i) A pavement condition analysis that includes ride, distress, rutting, and surface friction (as appropriate);

(ii) A pavement performance analysis that includes present and predicted

performance and an estimate of the remaining service life (performance and remaining service life to be developed with time); and

(iii) An investment analysis that:

(A) Identifies alternative strategies to improve pavement conditions;

(B) Estimates costs of any pavement improvement strategy;

(C) Determines maintenance, repair, and rehabilitation strategies for pavements using life-cycle cost analysis or a comparable procedure;

(D) Performs short and long term budget forecasting; and

(E) Recommends optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(f) For any roads in the inventory or subset thereof, PMS reporting requirements shall include, but are not limited to, percentage of roads in good, fair, and poor condition.

#### **§ 973.210 Indian lands Bridge Management System (BMS).**

In addition to the requirements provided in § 973.204, the BMS must meet the following requirements:

(a) The BIA shall have a nationwide BMS for the federally and Tribally owned IRR bridges that are funded under the FLHP and required to be inventoried and inspected under 23 CFR part 650, subpart C, National Bridge Inspection Standards (NBIS).

(b) Where a Tribe collects data for the Tribe's BMS, the Tribe shall provide the data to the BIA to be used in the nationwide BMS.

(c) The nationwide and Tribal BMSs may be based on the concepts described in the AASHTO's "Guidelines for Bridge Management Systems."<sup>2</sup>

(d) A BMS shall be designed to fit the BIA or Tribe's goals, policies, criteria, and needs using the following components, as a minimum, as a basic framework for a BMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The minimum BMS database shall include:

(i) The inventory data described by the NBIS (23 CFR 650.311);

(ii) Data characterizing the severity and extent of deterioration of bridge components;

(iii) Data for estimating the cost of improvement actions;

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) A history of conditions and actions taken on each bridge, excluding minor or incidental maintenance.

(2) A systematic procedure for applying network level analytical procedures that are capable of analyzing data for all bridges in the inventory or any subset. The minimum analyses shall include:

(i) A prediction of performance and estimate of the remaining service life of structural and other key elements of each bridge, both with and without intervening actions; and

(ii) A recommendation for optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(e) The BMS may include the capability to perform an investment analysis (as appropriate, considering size of structure, traffic volume, and structural condition). The investment analysis may include the ability to:

(1) Identify alternative strategies to improve bridge condition, safety and serviceability;

(2) Estimate the costs of any strategies ranging from maintenance of individual elements to full bridge replacement;

(3) Determine maintenance, repair, and rehabilitation strategies for bridge elements using life cycle cost analysis or a comparable procedure; and

(4) Perform short and long term budget forecasting.

(f) For any bridge in the inventory or subset thereof, BMS reporting requirements shall include, but are not limited to, percentage of non-deficient bridges.

#### **§ 973.212 Indian lands Safety Management System (SMS).**

In addition to the requirements provided in § 973.204, the SMS must meet the following requirements:

(a) The BIA shall have a nationwide SMS for all federally and Tribally owned IRR and public transit facilities included in the IRR inventory.

(b) Where a Tribe collects data for the Tribe's SMS, the Tribe shall provide the data to the BIA to be used in the nationwide SMS.

(c) The nationwide and Tribal SMS may be based on the guidance in "Safety Management Systems: Good Practices

<sup>1</sup> "Pavement Management Guide," AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at <http://www.transportation.org/publications/bookstore.nsf> or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090-6716.

<sup>2</sup> "Guidelines for Bridge Management Systems," AASHTO, 1993, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at <http://www.transportation.org/publications/bookstore.nsf> or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090-6716.

for Development and Implementation.”<sup>3</sup>

(d) The BIA and ITGs shall utilize the SMSs to ensure that safety is considered and implemented as appropriate in all phases of transportation system planning, design, construction, maintenance, and operations.

(e) The nationwide and Tribal SMSs may be utilized at various levels of complexities depending on the nature of the IRR facility involved.

(f) A SMS shall be designed to fit the BIA or ITG’s goals, policies, criteria, and needs using, as a minimum, the following components as a basic framework for a SMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the SMS. The minimum SMS database shall include:

- (i) Accident records;
- (ii) An inventory of safety hardware including signs, guardrails, and lighting appurtenances (including terminals); and
- (iii) Traffic information including volume and vehicle classification (as appropriate).

(2) Development, establishment and implementation of procedures for:

- (i) Routinely maintaining and upgrading safety appurtenances including highway-rail crossing warning devices, signs, highway elements, and operational features where appropriate;
- (ii) Routinely maintaining and upgrading safety features of transit facilities;
- (iii) Identifying and investigating hazardous or potentially hazardous transportation system safety problems, roadway locations and features; and
- (iv) Establishing countermeasures and setting priorities to correct the identified hazards and potential hazards.

(3) A process for communication, coordination, and cooperation among

the organizations responsible for the roadway, human, and vehicle safety elements;

(4) Development and implementation of public information and education activities on safety needs, programs, and countermeasures which affect safety on the BIA’s and ITG’s transportation systems; and

(5) Identification of skills, resources and training needs to implement safety programs for highway and transit facilities and the development of a program to carry out necessary training.

(g) While the SMS applies to all IRRs in the IRR inventory, the extent of system requirements (e.g., data collection, analyses, and standards) for low volume roads may be tailored to be consistent with the functional classification of the roads. However, adequate requirements should be included for each BIA functional classification to provide for effective inclusion of safety decisions in the administration of transportation by the BIA and ITGs.

(h) For any transportation facilities in the IRR inventory or subset thereof, SMS reporting requirements shall include, but are not limited to, the following:

- (1) Accident types such as right-angle, rear-end, left turn, head-on, sideswipe, pedestrian-related, run-off-road, fixed object, and parked vehicle;
- (2) Accident severity per year measured as number of accidents with fatalities, injuries, and property damage only; and
- (3) Accident rates measured as number of accidents (fatalities, injuries, and property damage only) per 100 million vehicle miles of travel, number of accidents (fatalities, injuries, and property damage only) per 1000 vehicles, or number of accidents (fatalities, injuries, and property damage only) per mile.

#### **§ 973.214 Indian lands Congestion Management System (CMS).**

(a) For purposes of this section, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. The BIA and the FHWA, in consultation with the Tribes, shall

develop criteria to determine when a CMS is to be implemented for a specific Federally or Tribally owned IRR transportation system that is experiencing congestion. Either the Tribe or the BIA, in consultation with the Tribe, shall consider the results of the CMS in the development of the IRR transportation plan and the IRR TIP, when selecting strategies for implementation that provide the most efficient and effective use of existing and future transportation facilities to alleviate congestion and enhance mobility.

(b) In addition to the requirements provided in § 973.204, the CMS must meet the following requirements:

(1) For those BIA or Tribal transportation systems that require a CMS, consideration shall be given to strategies that reduce private automobile travel and improve existing transportation system efficiency. Approaches may include the use of alternate mode studies and implementation plans as components of the CMS.

(2) A CMS will:

- (i) Identify and document measures for congestion (e.g., level of service);
- (ii) Identify the causes of congestion;
- (iii) Include processes for evaluating the cost and effectiveness of alternative strategies;
- (iv) Identify the anticipated benefits of appropriate alternative traditional and nontraditional congestion management strategies;
- (v) Determine methods to monitor and evaluate the performance of the multi-modal transportation system; and
- (vi) Appropriately consider the following example categories of strategies, or combinations of strategies for each area:

- (A) Transportation demand management measures;
- (B) Traffic operational improvements;
- (C) Public transportation improvements;
- (D) ITS technologies; and
- (E) Additional system capacity.

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**BILLING CODE 4910-22-P**

<sup>3</sup> “Safety Management Systems: Good Practices for Development and Implementation,” FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at <http://safety.fhwa.dot.gov/media/documents.htm>. It is available for inspection and copying as prescribed at 49 CFR part 7.