Systems: Good Practices for Development and Implementation.''[3]

(c) The tri-party partnership shall utilize SMS to ensure that safety is considered and implemented, as appropriate, in all phases of transportation system planning, design, construction, maintenance, and operations.

(d) The SMS may be utilized at various levels of complexity depending on the nature of the facility and/or network involved.

(e) The SMS shall be designed to fit the FH program goals, policies, criteria, and needs and shall contain the following components:

(1) An ongoing program for the collection, maintenance, and reporting of a database that includes:

(i) Accident records with detail for analysis such as accident type using standard reporting descriptions (*e.g.*, right-angle, rear-end, head-on, pedestrian-related, etc.), location, description of event, severity, weather, and cause;

(ii) An inventory of safety appurtenances such as signs, delineators, and guardrails (including terminals);

(iii) Traffic information including volume and vehicle classification (as appropriate); and

(iv) Accident rates by customary criteria such as location, roadway classification, and vehicle miles of travel.

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

(i) Where appropriate, routine maintenance and upgrading of safety appurtenances including highway rail crossing safety devices, signs, highway elements, and operational features,

(ii) Identifying, investigating, and analyzing hazardous or potentially hazardous transportation system safety problems, roadway locations, and features;

(iii) Establishing countermeasures and setting priorities to correct the identified hazards and potential hazards.

(3) Identification of focal points for all contacts at State, regional, tribal, and local levels to coordinate, develop, establish, and implement the SMS among the agencies.

(f) While the SMS applies to appropriate transportation systems providing access to and within National Forests and Grasslands funded under the FLHP, 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 roadway to provide for effective inclusion of safety decisions in the administration of the FH program.

§ 971.214 Federal 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. For portions of the FH network outside the boundaries of TMAs, the tri-party partnership shall:

(1) Develop criteria to determine when a CMS is to be implemented for a specific FH; and

(2) Have CMS coverage for the transportation systems providing access to and within National Forests, as appropriate, that meet minimum CMS criteria.

(b) The tri-party partnership shall consider the results of the CMS when selecting the implementation of strategies that provide the most efficient and effective use of existing and future transportation facilities.

(c) In addition to the requirements provided in § 971.204, the CMS must meet the following requirements:

(1) For those FH transportation systems that require a CMS, in both metropolitan and non-metropolitan areas, consideration shall be given to strategies that reduce private automobile travel and improve existing transportation efficiency. Approaches may include the use of alternative 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 to manage congestion;

(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.

[FR Doc. 04–4053 Filed 2–26–04; 8:45 am]

BILLING CODE 4910–22–U

[3] ''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.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 972

[FHWA Docket No. FHWA–99–4970]

FHWA RIN 2125–AE54

Federal Lands Highway Program; Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule provides for the development and implementation of safety, bridge, pavement and congestion management systems for transportation facilities serving the National Wildlife Refuge System (Refuge System) funded under the Federal Lands Highway Program (FLHP) as required by the Transportation Equity Act for the 21st Century (TEA–21). The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, Indian Reservation Roads, and Public Lands Highways. These management systems will provide a strategic approach to transportation planning, program development, and project selection.

EFFECTIVE DATE: March 29, 2004.

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

This final rule, the ANPRM, the NPRM, and all comments received by the U.S. Docket Facility, Room PL–401, may be viewed through the Docket Management System (DMS) at *http://dms.dot.gov.* 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 this 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.archives.gov* and the Government Printing Office's Web site 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 by rule safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways, Forest Highways, Refuge Roads, Indian Reservation Roads, and Public Lands Highways. 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 Fish and Wildlife Service (FWS) and the Refuge Roads program. Separate final rules on management systems have also been developed for the National Park Service (NPS) and the Park Roads and Parkways program, the Forest Service (FS) and the Forest Highway program, and the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads program. The other three related final rules are published elsewhere in today's **Federal Register**.

On September 1, 1999, the FHWA issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments concerning development of a proposed rule pertaining to the FWS and the Refuge Roads program (64 FR 47741). 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. 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. Subsequently, the FHWA decided to issue a separate rulemaking document for the management systems and address the planning systems at a later date.

On January 8, 2003, (68 FR 1096) the FHWA issued the notice of proposed rulemaking (NPRM) seeking comments on the proposal to implement management systems. These comments are summarized in the "Summary of Comments'' section. Based on the comments received to the docket, the FHWA has developed this final rule to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities providing access to the Refuge System and funded under the FLHP. There are instances where reference is made to transportation planning because the management systems serve as a guide to planning activities; however, this final rule only implements the development of management systems.

During the rulemaking process, the FHWA considered other elements for their relationship to the management systems. Among these was the need for an environmental management system (EMS). The FHWA is currently supporting and participating in the development of the American Association of State Highway and Transportation Officials' Center for Environmental Excellence in which EMSs, as they relate to transportation, are a major component. This is consistent with the FHWA's priority on environmental stewardship and streamlining. The FHWA continues to demonstrate environmental stewardship by promoting the use of EMSs in the construction, operation, and maintenance of transportation facilities. As implementation plans are developed for the management systems, the FHWA will promote coordination of the transportation management systems with individual agency plans to implement an EMS. At a minimum, this would provide an opportunity to link existing environmental data to the transportation management systems using a common geographic information system. The FHWA decided not to address EMS as part of this rulemaking action, but recognizing the importance of EMS initiatives, the FHWA believes that EMSs are most appropriately pursued as part of sound business planning of each individual agency.

Summary of Comments

The FHWA received three comments to the docket on the NPRM. Of these three, one was from a five-State coalition of State Departments of Transportation (State DOTs), comprised of the State DOTs of Idaho, Montana, North Dakota, South Dakota and Wyoming (the State DOT coalition), and the other two were from the California (Caltrans) and Washington (WSDOT) State DOTs. The following discussion summarizes the specific comments received and the FHWA's response to the comments.

Rule Development

Comment: Caltrans and the WSDOT provided supportive comments. Caltrans indicated general support for the FHWA's efforts to develop management systems for transportation facilities on Federal lands.

The WSDOT stated the application of management systems for transportation facilities on Federal lands was a good business practice, and the agency offered to provide technical assistance to the Federal land management agencies (FLMAs).

Response: The FHWA supports efforts by the WSDOT to provide technical assistance in the development of the management systems, and encourages all State DOTs to provide technical assistance, if requested. In addition, the FHWA appreciates recognition by Caltrans and the WSDOT of the importance of the management systems to the FLMAs.

Comment: The FWS inquired about the feasibility of broadening the definition of the term Refuge road to include National Fish Hatchery roads, to allow for any future expansion in eligibility in the event that the Congress should add this category of roads to the Refuge Road program.

Response: The FHWA believes that it would be speculative to attempt to draft a definition broad enough to cover the addition of this category of roads, and any details that may accompany such a change, until the Congress takes such action. However, the FWS can elect to collect data for National Fish Hatchery Roads for inclusion in the management systems using their own funds. The FHWA would support such an effort as useful to overall system management in the future.

Implementation—Process and Coordination Issues

Comments: The State DOT coalition and Caltrans suggested Federal agencies should use existing systems to avoid redundancy and assure compatibility with existing State systems.

The State DOT coalition further suggested that two methods to achieve this are coordinating with the State DOTs that currently have management systems in place to assure compatibility, or pooling resources with other Federal land management agencies. The State DOT coalition also indicated

management systems should be implemented efficiently to control costs, by limiting the data collected to the minimum necessary to achieve goals and objectives for the Refuge Road program. The State DOT coalition further indicated that judicious determination of the extent of the requirements for the new management systems could preserve program funds for actual projects. The State DOT coalition suggested including a provision in the rule that excludes from the management systems any roads that are already the responsibility of a State.

Response: Section 972.204(b) of the final rule, ''Management systems requirements,'' includes a requirement for the FWS and the FHWA to develop an implementation plan for each of the management systems. The plans will include, but are not limited to: Overall goals and policies concerning the management systems; each agency's responsibilities for developing and implementing the management systems; implementation schedule; data sources; and cost estimate. Other process issues, such as avoiding redundancy, coordination for data sharing, compatibility of data and systems, and specific data required to support the management systems can also be addressed in the implementation plans.

The implementation plans will also provide an opportunity to clarify the roles and responsibilities of the FWS, the FHWA and the States. Nothing in the rule is intended to affect a State's or MPO's role in providing accident or congestion data for its facilities covered by the management systems. The plans are intended to develop effective means of collecting and using information to improve decision-making for the Refuge Road program, and to promote data sharing. Inclusion of State or MPO data in the management systems does not assume that the FWS would duplicate the data collection effort already undertaken by a State or MPO. Emphasis is on the importance of cooperation and coordination in understanding responsibilities, and sharing data.

While the FHWA has acknowledged part of the data collection burden will be a State responsibility, minimizing that burden is a responsibility of the FWS in its role of establishing and maintaining the management systems. States will have the opportunity to help determine how the information is collected and used during the development of the implementation plans. One important component of the management systems will be compatibility with existing State systems, as a means to minimize any additional data collection burden or duplication of effort.

Implementation—Management System Structure and Data Standards

Comment: The FWS requested clarification of the meaning of the term, ''as appropriate'' in § 972.212(c) regarding the consideration and implementation of safety in development and application of the management systems. The FWS interpretation of the term would provide for some flexibility in judgment for designing the management systems to meet the goals, policies and needs of the Refuge Road program consistent with the intent and requirements of the proposed rule, as opposed to a rigid application of a one-size-fits-all approach.

Response: The FHWA agrees with the FWS comment about the need to clarify the meaning of the term, ''as appropriate'' as applied in the rule, since it appears numerous times in the rule, in addition to the section referenced by the FWS. The term, ''as appropriate'' is intended to provide a certain amount of flexibility for the FWS and the FHWA to plan for management systems that meet program needs, but also are cost effective and efficient to implement. To reinforce the need for such flexibility, the FHWA has revised § 972.204(a) to provide for professional engineering and planning judgment in determining the nature and extent of the required management systems coverage.

Comment: The State DOT coalition indicated that it might be unduly costly to develop a pavement management system for all roads by including unpaved roads.

Response: For clarification, the FWS pavement management system limits coverage to paved RR and other associated transportation facilities.

Section-by-Section Analysis

After careful consideration of the comments received, the FHWA has modified the final rule to address the FWS concern over the term ''as appropriate'' in meeting the intent and requirements of the rule. This section-by-section analysis describes the change.

Section 972.204—Management System Requirements

Comment: The FWS inquired about the intended meaning of the term, ''as appropriate'' as applied in § 972.212(c), since the term was seemingly applied to this management system, but not all of the others.

Response: The FHWA supports the need to clarify the intended meaning of the term, ''as appropriate'' as applied, not only in § 972.212(c), but also throughout the FWS management system final rule, since the term does appear in numerous subsections of the rule. The term allows some flexibility in designing the management systems to meet the goals, policies and needs of the FWS for the Refuge Road program. In addition, the FHWA supports the need and desire for flexibility in developing and implementing the management systems. To provide the necessary flexibility, the FHWA has modified the second sentence of § 972.204(a) by inserting the following after the word ''needs,'' ''* * * using professional engineering and planning judgment to determine the required nature and extent of systems coverage consistent with the intent and requirements of this rule.''

Conclusion

The FHWA anticipated public interest in this rulemaking and the comments to the docket have helped to raise awareness about roles and responsibilities of all entities involved in the implementation of this rule that will be important to consider in the development of the implementation plans and the resulting management systems. These implementation plans can be an effective tool in avoiding duplication and redundancy, minimizing the burden on States and other non-Federal entities, and determining the required extent of management systems coverage. The FHWA believes that the resulting changes in the final rule address the questions raised by the FWS and the States, and will yield enhanced cooperation and coordination in its implementation.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined this final rule is 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 Refuges. The Office of Management and Budget has reviewed this document under E.O. 12866. The FHWA anticipates that the economic impact of any action taken in this rulemaking process will be minimal. The FHWA anticipates that this final rule will not adversely affect any sector of the economy in a material way. Though this

final action will impact the FWS, it will not likely interfere with any action taken or planned by the FWS or another agency, or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

The FHWA has considered the costs and benefits associated with this rulemaking and the information provided in response to the proposed rule, and believes the benefits outweigh the costs. Information provided by the management systems will enhance transportation investment decisions for the Refuge Road program, and improve the overall efficiency of the FWS transportation system. In addition, the management systems will assist the FHWA in its stewardship and oversight roles. The benefits of the management system information will be significant in relationship to the costs of implementation.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This final rule will not impose a mandate that requires further analysis under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This final 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 final rule provides for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities serving the Refuge System roads that are funded under the FLHP, therefore, this action is not considered an unfunded mandate.

Executive Order 13132 (Federalism)

This final 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 action will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this final action will 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 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 final 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 requested that the OMB approve a single information collection clearance for all of the data in the four management systems at the time the final rule is published. The FHWA is sponsoring this clearance on behalf of the Fish and Wildlife Service.

The FHWA estimates that a total of 3,700 burden hours will be imposed on non-Federal entities to provide some of the required safety and congestion management information. Respondents to this information collection may include State transportation departments, Metropolitan Planning Organizations (MPOs), regional transportation planning agencies, and county and local governments.

A measurable level of effort may be required of non-Federal entities to provide management system information for the safety and congestion management systems. A similar level of effort is not anticipated for the pavement and bridge management systems, since the entire RR system is under the jurisdiction of the FWS. The burden on States will be measurable at a level commensurate with the relatively modest extent of the RR system. For estimating purposes, each State has been assigned 26 hours of burden in providing safety information. Thus, the total annual burden estimate for the safety management system is 1,300 hours.

For implementation of the congestion management system (CMS), the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the FLMAs to coordinate their management systems with the MPOs for that portion of their transportation system that is within the MPO area. This results in a total annual burden estimate of 2,400 hours for the FWS CMS.

The State DOT coalition provided comments on the proposed data collection indicating that the management systems should be implemented in a way that does not burden States or adversely affect the funding or other resources available for the State programs. The State DOT coalition's comments encouraged a cooperative process using approaches that would avoid redundancy and duplication in implementing the management systems.

The FHWA anticipated some burden on States and MPOs in the burden estimates prepared as part of the rulemaking. The State DOT coalition did not question the need for management systems or the FHWA's burden estimates. The FHWA believes that the value of the management systems information for transportation decision-making outweighs the burden of collecting it. The FHWA has tried to keep the data collection burden to the lowest level possible, while still providing for the necessary data, and believes the burden estimates to be fair and equitable. The Fish and Wildlife Service has responsibility to develop the management systems in a manner that would incorporate any existing data in the most efficient way and without additional burdens to the public.

National Environmental Policy Act

The FHWA 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 final rule will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and concluded that the final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government, and will not preempt tribal law. The requirements set forth in this rule do not directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

Executive Order 12988 (Civil Justice Reform)

This final rule 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)

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

Executive Order 12630 (Taking of Private Property)

This final rule will not 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)

This final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distributions, or Use. The FHWA has determined that it is not a significant energy action under that order because, although this final rule 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 972

Bridges, Congestion management, Grant program—transportation, Highways and roads, Management systems, Pavement management, Public lands, Safety management, Transportation, Wildlife Refuge roads.

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

Issued on: February 18, 2004.

Mary E. Peters,

Federal Highway Administrator.

1. Add a new part 972 to subchapter L to read as follows:

PART 972—FISH AND WILDLIFE SERVICE MANAGEMENT SYSTEMS

Subpart A—Definitions

Sec.

Subpart B—Fish and Wildlife Service Management Systems

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

Subpart A—Definitions

§ 972.100 Purpose.

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

§ 972.102 Applicability.

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

§ 972.104 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 mean the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

Federal lands bridge management system (BMS) means a systematic process used by the Forest Service (FS), the Fish and Wildlife Service (FWS) and the National Park Service (NPS) 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 effectively considered.

Federal lands congestion management system (CMS) means a systematic process used by the FS, FWS and NPS 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.

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.

Federal lands pavement management system (PMS) means a systematic process used by the FS, FWS and NPS 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.

Federal lands safety management system (SMS) means a systematic process used by the FS, FWS and NPS 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.

Fish and Wildlife Service transportation plan means the official Fish and Wildlife Service-wide multimodal transportation plan that is developed through the Fish and Wildlife Service transportation planning process pursuant to 23 U.S.C. 204.

Highway safety means the reduction of traffic accidents, and deaths, injuries, and property damage resulting therefrom, on public roads.

Intelligent transportation system (ITS) means electronics, communications, or information processing used singly or in combination to improve the efficiency and safety of a surface transportation system.

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: User costs such as delay and safety costs associated with maintenance and rehabilitation projects, agency capital cost, and life-cycle maintenance costs.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5306 must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decision-making for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

National Wildlife Refuge System (Refuge System) means all the lands and waters reported by the FWS as being part of the National Wildlife Refuge System in the annual ''Report of Lands Under Control of the U.S. FWS.'' [1] Included in the Refuge System are those lands that are generally known as refuges, waterfowl production areas, wetland management districts, and coordination areas.

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

Refuge road means a public road that provides access to or is located within a unit of the National Wildlife Refuge System and for which title and maintenance responsibilities are vested in the United States Government.

Refuge Roads program means the funds allocated each fiscal year, as described in 23 U.S.C. 202(e) and 23 U.S.C. 204(k).

Refuge Roads transportation improvement program (RRTIP) means a staged, multiyear, multimodal program of transportation projects for the Refuge Roads Program consistent with the Fish and Wildlife Service transportation plan and planning processes pursuant to 23 U.S.C. 204(a) and (k).

Secretary means the Secretary of Transportation.

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.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the Federal Highway Administration and the Federal Transit Administration. The TMA designation applies to the entire metropolitan planning area(s).

Subpart B—Fish and Wildlife Service Management Systems

§ 972.200 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 the extent appropriate, to develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the FLHP.

§ 972.202 Applicability.

The provisions in this subpart are applicable to the Fish and Wildlife Service (FWS) and the Federal Highway Administration (FHWA) that are responsible for satisfying these requirements for management systems pursuant to 23 U.S.C. 204.

§ 972.204 Management systems requirements.

(a) The FWS shall develop, establish and implement the management systems as described in this subpart. The FWS may tailor the management systems to meet the FWS goals, policies, and needs using professional engineering and planning judgment to determine the required nature and extent of systems coverage consistent with the intent and requirements of this rule.

(b) The FWS and the FHWA shall develop an implementation plan for each of the management systems. These plans will include, but are not limited to, the following: Overall goals and policies concerning the management systems, each agency's responsibilities for developing and implementing the management systems, implementation schedule, data sources, and cost estimate. The FHWA will provide the FWS ongoing technical engineering support for the development, implementation, and maintenance of the management systems.

(c) The FWS shall develop and implement procedures for the development, establishment, implementation and operation of management systems. The procedures shall include:

(1) A process for ensuring the results of any of the management systems are considered in the development of FWS transportation plans and transportation improvement programs and in making project selection decisions under 23 U.S.C. 204;

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

(3) A description of each management system;

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

(5) A process for data collection, processing, analysis and updating for each management system.

(d) All management systems will use databases with a geographical reference system that can be used to geolocate all database information.

(e) Existing data sources may be used by the FWS to the maximum extent possible to meet the management system requirements.

(f) The FWS shall develop an appropriate means to evaluate the effectiveness of the management systems in enhancing transportation decision-making and improving the overall efficiency of the affected federally owned transportation systems and facilities. This evaluation is to be conducted periodically, preferably as part of the comprehensive resource conservation planning process.

(g) The management systems shall be operated so investment decisions based on management system outputs can be accomplished at the regional level.

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

The Refuge Roads program funds may be used for development, establishment, and implementation of the management systems. These funds are to be administered in accordance with the procedures and requirements applicable to the funds.

§ 972.208 Federal lands pavement management system (PMS).

In addition to the requirements provided in § 972.204, the PMS must meet the following requirements:

(a) The FWS shall, at a minimum, have PMS coverage of all paved refuge roads and other associated facilities, as appropriate, funded under the FLHP.

(b) The PMS may be based on the concepts described in the AASHTO's ''Pavement Management Guide.'' [2]

(c) The PMS may be utilized at various levels of technical complexity depending on the nature of the pavement network. These different levels may depend on mileages,

[1] ''Report of Lands under Control of the U.S. FWS,'' U.S. FWS, (published annually on September 30). A free copy is available from the U.S. FWS, Division of Realty, 4401 N. Fairfax Drive, Suite 622, Arlington, VA 22203; telephone: (703) 358–1713.

[2] ''Pavement Management Guide,'' AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It is also available from the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716 or online at *http://www.transportation.org/publications/bookstore.nsf.*

functional classes, volumes, loadings, usage, surface type, or other criteria the FWS deems appropriate.

(d) The PMS shall be designed to fit the FWS 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 are 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 FWS managed transportation facilities 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) Provides 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).

(e) For any FWS managed transportation facilities 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.

§ 972.210 Federal lands bridge management system (BMS).

In addition to the requirements provided in § 972.204, the BMS must meet the following requirements:

(a) The FWS shall have a BMS for bridges which are under the FWS jurisdiction, funded under the FLHP, and required to be inventoried and inspected under 23 CFR 650, subpart C, National Bridge Inspection Standards (NBIS).

(b) The BMS shall be designed to fit the FWS 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 required by the NBIS (23 CFR 650, subpart C);

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

(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) Analytical procedures that are capable of analyzing data for all bridges in the inventory or any subset. These procedures include, as appropriate, such factors as bridge condition, recommended repairs/replacement and estimated costs, prediction of the estimated remaining life of the bridge, development of a prioritized list of candidate projects over a specified planning horizon, and budget forecasting.

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

§ 972.212 Federal lands safety management system (SMS).

In addition to the requirements provided in § 972.204, the SMS must meet the following requirements:

(a) The FWS shall have an SMS for all transportation facilities serving the Refuge System, as appropriate, funded under the FLHP.

(b) The FWS SMS may be based on the guidance in "Safety Management Systems: Good Practices for Development and Implementation."[3]

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

(d) The SMS may be utilized at various levels of complexity depending on the nature of the transportation facility involved.

(e) The SMS shall be designed to fit the FWS goals, policies, criteria, and needs using, as a minimum, the following components as a basic framework for a SMS:

(1) An ongoing program for the collection, maintenance and reporting of a database that includes:

(i) Accident records with sufficient detail for analysis such as accident type using standard reporting descriptions (e.g., right-angle, rear-end, head-on, pedestrian-related, etc.), location, description of event, severity, weather and cause;

(ii) An inventory of safety appurtenances such as signs, delineators, and guardrails (including terminals);

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

(iv) Accident rates by customary criteria such as location, roadway classification, and vehicle miles of travel.

(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; and

(ii) Identifying and investigating hazardous or potentially hazardous transportation system safety problems, roadway locations and features, then 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; and

(4) Development and implementation of public information and education activities on safety needs, programs, and

[3] "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.

countermeasures which affect safety on the FWS transportation systems.

(f) While the SMS applies to appropriate transportation facilities serving the Refuge System funded under the FLHP, 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, sufficient detail should be included for each functional classification to provide adequate information for use in making safety decisions in the RR program.

§ 972. 214 Federal 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. For those FWS transportation systems that require a CMS, in both metropolitan and non-metropolitan areas, 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. The FWS shall consider the results of the CMS when selecting the implementation of strategies that provide the most efficient and effective use of existing and future transportation facilities, and alleviate congestion.

(b) In addition to the requirements provided in § 972.204, the CMS must meet the following requirements:

(1) For portions of the FWS transportation system within TMAs, the FWS transportation planning process shall include a CMS that meets the requirements of this section. By agreement between the TMA and the FWS, the TMA's CMS coverage may include the transportation facilities serving the Refuge System, as appropriate. Through this agreement(s), the FWS may meet the requirements of this section.

(2) If congestion exists at a FWS facility within the boundaries of a TMA, and the TMA's CMS does not provide coverage of the portions of the FWS transportation facilities experiencing congestion, the FWS shall develop a separate CMS to cover those facilities.

(3) For portions of the FWS transportation system outside the boundaries of TMAs, the FWS shall:

(i) Develop criteria to determine when a CMS is to be implemented for a specific transportation system; and

(ii) Have CMS coverage for all transportation facilities serving the Refuge System, as appropriate, funded through the FLHP that meet minimum CMS needs criteria.

(4) 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 to manage congestion;

(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;

(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;

(E) Additional system capacity; and

(vii) Provide information supporting the implementation of actions.

[FR Doc. 04–4054 Filed 2–26–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 973

[FHWA Docket No. FHWA–99–4968]

FHWA 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: Final rule.

SUMMARY: This final rule provides 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 Federal Lands Highway Program (FLHP) as required by the Transportation Equity Act for the 21st Century (TEA–21). The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, Indian Reservation Roads, and Public Lands Highways. These management systems will provide a strategic approach to transportation planning, program development, and project selection.

EFFECTIVE DATE: March 29, 2004.

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

This final rule, the ANPRM, the NPRM, and all comments received by the U.S. Docket Facility, Room PL–401, may be viewed through the Docket Management System (DMS) at *http://dms.dot.gov.* 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 this Web site.

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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 by rule safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways, Forest Highways, Refuge Roads, Indian Reservation Roads, and Public Lands Highways. The Secretary of Transportation delegated to the FHWA the authority to serve as the lead agency within the U.S. Department of Transportation (USDOT) 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. Separate final rules 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