Department of Transportation

Plan for Implementation of Executive Order13563

Retrospective Review and Analysis of Existing Rules

August 2011

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I. Executive summary of plan and compliance with Executive Order 13563

Executive Order 13563 (E.O. 13563) stresses the importance of an agency having a regular, ongoing plan to review its existing regulations. When a final rule is issued, regardless of the quality of the agency's analysis, it cannot be certain that the rule will work as intended and that the costs and benefits will match the agency's estimates. Since 1998, the Department of Transportation (DOT or Department) has had a plan that requires all of its existing rules to be reviewed every 10 years to determine whether they need to be revised or revoked. We have published the plan in our semi-annual Regulatory Agenda and posted it on the Department's regulatory website. Through this, as well as special reviews that the Department or its operating administrations also use, the public has been provided opportunities to comment on our priorities for review as well as provide us with information on the need for changes to particular reviews.

In response to E.O. 13563, the Department has decided to improve its plan by adding special oversight processes within the Department; encouraging effective and timely reviews, including providing additional guidance on particular problems that warrant review; and expanding opportunities for public participation. We will also merge the results of the retrospective review of our existing rules that we conducted pursuant to E.O. 13563 and the other special reviews we conduct into our 10-year review plan to provide a simpler resource for the public and a more effective tool for oversight and management of our retrospective reviews of rules.

Our plan also contains 79 existing rules for which we have already undertaken or proposed actions that promise significant savings in terms of money and burden hours. In addition, we have identified 56 other rules that we have committed to study recommendations further before deciding on the appropriate action. One example of a rule that promises to produce significant cost savings involves positive train control. The Department is currently considering modifying or removing several provisions in the rule. We currently expect initial installation savings to total between $223.7 million and $403.0 million. Over twenty years, savings (including maintenance) should total between $442.8 million and $1.04 billion.

Pursuant to E.O.13563, we are not expected to perform simply a single review; rather, we are expected to perform a "periodic review of existing significant regulations," with close reference to empirical evidence. The

executive order explicitly states that "retrospective analyses, including supporting data, should be released online wherever possible." Consistent with our commitment to periodic review and to public participation, DOT will continue to assess its existing significant regulations in accordance with the requirements of E.O. 13563. We welcome public suggestions about appropriate reforms. If, at any time, members of the public identify possible reforms to streamline requirements and to reduce existing burdens, we will give those suggestions careful consideration.

II. Scope of plan

a. **DOT and the elements of the Department that are included in this plan**. The Department of Transportation (DOT) consists of ten operating administrations and the Office of the Secretary, each of which has statutory responsibility for a wide range of regulations. DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, and pipeline transportation areas. DOT also regulates aviation consumer and economic issues and provides financial assistance for programs involving highways, airports, public transportation, the maritime industry, railroads, and motor vehicle safety. The Department writes regulations to carry out a variety of statutes ranging from the Americans with Disabilities Act to the Uniform Time Act. Finally, DOT develops and implements a wide range of regulations that govern internal programs such as acquisitions and grants, access for the disabled, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, and the operation of aircraft and vehicles. The following is a list of the elements of the Department:

- Office of the Secretary (OST)
- Federal Aviation Administration (FAA)
- Federal Highway Administration (FHWA)
- Federal Motor Carrier Safety Administration (FMCSA)
- Federal Transit Administration (FTA)
- Federal Railroad Administration (FRA)
- Maritime Administration (MARAD)
- National Highway Traffic Safety Administration (NHTSA)
- Pipeline and Hazardous Material Safety Administration (PHMSA)
- Research and Innovative Technology Administration (RITA)

- Saint Lawrence Seaway Development Corporation (SLSDC)

b. Documents covered under this plan

This plan covers all of the Department's existing rules. Any review of a listed rule may also include related guidance, information collections, and other documents, such as waivers and interpretations.

III. Public access and participation in the development of this plan

a. **Public Access**.

i. **Written comments**. In response to E.O. 13563, DOT published a **notice** in the *Federal Register* on February 16, 2011, requesting comments on a plan for reviewing existing rules as well as identification of existing rules that should be reviewed because they may be outmoded, ineffective, insufficient, or excessively burdensome. The notice provided a link to the **docket** and the docket number for this proceeding. It also announced that we would hold a public meeting, chaired by the DOT General Counsel and attended by our operating administration chief counsels, on March 14, 2011.

ii. **Public Meeting**. On March 3, 2011, we published a **notice** providing information on how the public could speak at the meeting and take advantage of other opportunities for participation. At the public meeting, which was held at DOT headquarters in Washington, D.C., we permitted speakers to participate in person or via telephone; we also broadcast the meeting via web streaming and listen-only phone lines for those who could not attend in person.

iii. **IdeaScale**. The public meeting notice also announced that DOT had created a website using IdeaScale to provide the public with an alternative means to provide us with written feedback in a less formal manner. We noted that this would permit participants to discuss ideas with others and agree or disagree with them, perhaps making it particularly useful for individuals and small entities, including local and tribal governments. We also suggested it might help participants refine their suggestions and gather additional information or data to support those suggestions.

iv. **Effective comments**. Finally, in our notices and on-line (see the heading "How do I prepare effective comments?" under our description of **"The Informal Rulemaking Process"**), we provided advice on how participants could make their suggestions more useful to us.

b. **Public participation.** We placed all comments, including a transcript of the public meeting, in DOT's docket. We received comments from 102 members of the public, with many providing us with multiple suggestions. In addition, 47 people participated in discussions on our IdeaScale site (32 others signed up but did not directly participate), through which we received 53 suggestions; 11 comments were submitted about others' suggestions. Forty-seven people attended our public meeting in person, with 154 additional people watching via our web cast and 62 over our phone lines; 18 people spoke at the meeting (3 by telephone). A brief summary of each of the suggestions we received and the name of the person or organization submitting the comment is contained in Attachment 1 to this Plan.

c. **Additional outreach efforts**. The Department took a number of additional steps to ensure the widest possible audience received notice of our request for their participation in this important project. We issued a press alert, sent out a series of emails to a broad range of interest groups, and posted information on the **Secretary's blog** and the **DOT regulatory webpage,** with special alerts for updates. We also set up a special "button" on the **DOT home page** graphically designed to draw people's attention and bring them to the IdeaScale site, where they could also get more information about the retrospective reviews.

d. The Preliminary Plan. After the public comment period ended, we reviewed and prepared our responses to the comments we received and developed our Preliminary Plan in response to E.O. 13563. We then posted the Preliminary Plan on the **DOT regulatory webpage** on June 3, 2011, and asked for any further public comment by July 3. We received one, nonsubstantive comment on IdeaScale and one substantive comment to which we have provided a response.

IV. Current agency efforts already under way independent of E.O. 13563

a. Summary of pre-existing agency retrospective analyses of existing rules.

i. **Overview**. For many years, the Department has been conducting two general categories of retrospective reviews of existing rules. The first is a regular review of all existing rules over a 10-year

period. The second consists of special reviews conducted on either an ad hoc basis or as part of a plan. Of course, the agency also may conduct reviews of rules in response to public petitions under the Administrative Procedure Act; those reviews may fall into either one of these categories.

ii. **Regular review.**

1. **Background.** DOT has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our 1979 **Regulatory Policies and Procedures** require such reviews. We also have responsibilities under E.O. **12866** ("Regulatory Planning and Review") and, now, E.O. 13563, as well as section 610 of the **Regulatory Flexibility Act** to conduct reviews. Finally, there are other requirements, such as one requiring that our rules be written in plain language. To ensure that all of our rules are reviewed in accordance with these requirements in an organized manner, beginning in 1998, DOT published, in the Regulatory Agenda, a plan listing all of our rules and assigned each to a particular year for review during the next 10 years. In 2008, we published our plan for the next 10 years. Updates to our plan are made each Fall in the Regulatory Agenda, including brief reports on the progress made on the reviews. We plan to continue this process, creating new plans every 10 years and regularly updating them.

2. **Review process.** Each DOT agency divides its existing rules – generally by parts of the Code of Federal Regulations (CFR) – among the 10 years as it deems appropriate, using a variety of criteria. For example, an agency may group related rules together for review in one year or base the timing of the review on a perceived need for an earlier review. The one exception to this general process is the FAA. The FAA, in addition to reviewing its rules in accordance with the schedule provided in the Agenda for reviews required under section 610 of the Regulatory Flexibility Act, has established a process by which the public is asked every three years for its comments on which rules need review the most. (See, e.g., **72 Federal Register 64170**.)

3. **Publication/public participation.** Our review plan is published in Appendix D to our **semi-annual Regulatory**

Agenda. We also describe our review plan and provide a link to it on DOT's regulatory website, regs.dot.gov. The actions we are taking are described in the Agenda in more detail. Through the Agenda and our website, we request public comment on the timing of the reviews. For example, we ask if there is a reason for scheduling an analysis and review for a particular rule earlier than we have. Any comments concerning the plan or particular analyses can be submitted to the appropriate regulatory contacts listed in our Agenda or on our website.

4. **General information**. In our description of our plan, we note that some reviews may be conducted earlier or later than scheduled. For example, events -- such as crashes -- may result in the need to conduct earlier reviews of some rules. We also note that we might make changes in response to public comment on the plan or in response to a Presidentially-mandated review. If there is any change to the review plan, we note the change in the next Regulatory Agenda.

5. **Follow-up action**. In Appendix D in each fall Agenda, we publish a very brief summary of the results of the analyses we have completed during the previous year. For rules we determine to have a significant economic impact on a substantial number of small entities, we announce that we will conduct a formal, section 610 review during the following 12 months. We also seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted.

iii. **Special reviews.**

1. **Ad hoc reviews.** As a result of unplanned events such as crashes, we will also often conduct reviews of our existing rules. For example, after a major aircraft crash, the Secretary may immediately meet with senior officials to review information about the crash, including information on why existing rules did not prevent the accident or lessen the damage. This type of review may lead to significant changes to the rule. An example of this type of review is an ongoing review of rules covering motorcoaches that DOT initiated after two crashes earlier this year.

2. **Planned reviews.** As the result of the review of regularly gathered data or special studies, one of our agencies may

notice a developing problem that warrants a review to determine why our existing regulations are not preventing the problem. For example, NHTSA decided to review its data to determine how occupants were dying in frontal crashes despite wearing seat belts and having air bags deploy. This review has spawned two research projects to determine whether revisions to the rules are necessary. Some specific examples of recent DOT initiatives are worth noting –

- **Hazardous materials**. In a **report issued on March 1, 2011, PHMSA** notes the hazardous materials "in transport that have been responsible for the most serious consequences in terms of deaths and major injuries during the years 2005 to 2009." The report "also identifies failure modes and the corresponding transportation phases that have resulted in the most high-impact casualties during the same period." The agency notes that it will next analyze "alternatives to increase safety" and the findings from the report that it will consider.

- **Motor vehicles**. Another report was issued by NHTSA on March 31, 2011. This report "describes the projects the agency plans to work on in the rulemaking and research areas for calendar years 2011 to 2013" that are "priorities or will take significant agency resources." For example, the agency notes that it is performing an analysis of the effect of electronic stability control, a device recently required on all automobiles and light trucks; it is also studying "the feasibility of a dynamic rollover test to identify occupant injury risk."

- **Truck and bus compliance, safety, and accountability (CSA).** CSA is a major FMCSA initiative for the comprehensive review, analysis, and restructuring of the agency's current safety monitoring system, as well as its compliance and enforcement programs. The initiative will optimize the resources of FMCSA and its State partners in ensuring that interstate truck and bus companies have effective safety management controls to

achieve compliance with Federal safety and hazardous materials regulations.

- **Paperwork reduction.** Existing rules governing hours of service (HOS) for operators of commercial motor vehicles require that the drivers complete logs of the hours they drive. This results in a significant information collection burden. An FMCSA retrospective review of hours of service rule compliance showed difficulties enforcing the log requirement; it also showed that there was tremendous potential for reducing burdens and increasing compliance with the standards through a requirement for electronic on-board recorders (EOBRs). As result of this review, in a final rule issued on April 5, 2010, FMCSA required the devices on all vehicles operated by those with a history of non-compliance with HOS rules beginning June 2012. This will result in an information collection burden reduction of 3.11 million hours. On February 1, 2011, FMCSA issued an NPRM that would require most of the rest of the industry to use EOBRs. Our preliminary estimate is that information collection burden hours could be reduced by up to approximately 70 million hours, but we recognize that many in the rest of the industry already use EOBRs. We will review and revise our estimates, as necessary, as we develop our final action on this rulemaking.

- **Small disadvantaged businesses.** As a result of a review of the Department's Disadvantaged Business Enterprise rule, we issued a rule in January 2011 that created a new mechanism concerning interstate certification that will reduce time and cost burdens on small disadvantaged businesses. The provision goes into effect in January 2012. Under the provision, a DBE certified in State A will not have to fill out a new application and go through a full certification process to become an eligible DBE in State B. Rather, State B will decide, on the basis of the application materials provided to State A, whether to certify the firm. If State B does not object to something specific about the firm's eligibility within 60 days, the firm becomes certified in State B. If there is such an objection,

the firm has an opportunity to respond on that specific point.

- **Other NHTSA examples.** NHTSA has numerous other good examples of it evaluations of the effectiveness of its rules. The agency prepared 10 reports in the last two calendar years. A list of the reports is contained in Attachment 3. The following findings were made because of these reports:

    1. Weight should be taken out of larger light trucks rather than lighter vehicles to save fuel and affect safety the least.
    2. Underride guards were working well in centered rear impacts, but corner impacts were a bigger problem.
    3. Parents should keep children in child restraints at ages 3-4 and as long as possible, rather than graduating them to booster seats, and should keep them in booster seats rather than graduating them to lap/shoulder belts. Child restraints are more effective than booster seats, which are more effective than adult lap/shoulder belts. This information is used in the NHTSA public affairs office and in child restraint checkpoints across the nation.
    4. Offset corner impacts (where there is not much structure) and truck underride were two main areas for NHTSA to do more work on with respect to frontal impact fatalities for those using seat belts and air bags. The agency has started research activities in both of those areas.

b. **Specific rules already scheduled for retrospective analysis**. We scheduled all of DOT's existing rules as of 2008 for review during a specific year between 2008 and 2017. We published the schedule in Appendix D to our semi-annual Regulatory Agenda. See Attachment 2 to this Plan.

V. Elements of preliminary plan/compliance with E.O. 13563

a. **Overview of changes to DOT's retrospective review plan in response to E.O. 13563.** As explained in more detail in this section and section

VI., in response to E.O. 13563, DOT will add the following new features to its existing retrospective review plan:

- We will add oversight and discussions of DOT's retrospective review plans, including our priorities, to our weekly Regulatory Review Meetings.
- We will merge the results of the E.O. 13563 retrospective review of our existing rules and any special reviews we conduct into our 10-year review plan
- Our review teams will include others, such as inspectors and enforcement staff, in addition to any necessary personnel involved in drafting the existing rule.
- We will use advisory committees to review the retrospective review plans for our operating administrations with sufficient rules to justify advisory committee review.
- We will add to our website, regs.dot.gov, the list of factors that we use to identify the need for a retrospective review and ask the public for comments on these factors and the appropriate metrics we should use in evaluating particular rules in those categories.
- We will incorporate the use of IdeaScale into our retrospective review process to allow the public to more easily and effectively submit comments on our process and suggestions for specific rules that should be reviewed.
- We will continue exploring potentially more effective ways to involve the public in our retrospective review process through such things as our project with the Cornell e-Rulemaking Initiative.
- We will publish our retrospective review plan at regs.dot.gov.

b. **Strong, ongoing culture of retrospective analysis**.

i. **Ten-year plan.** The voluntary establishment of an ongoing, 10-year rolling retrospective review combined with the effective use of special reviews illustrates an existing, strong culture for such reviews in DOT.

ii. **Regulatory review meetings**. To further increase the effective use of such reviews, in response to E.O. 13563, DOT will expand its use of its weekly Regulatory Review Meetings. Currently, each week, on a rolling schedule, the head of one of the operating administrations or OST is scheduled for a meeting with the Deputy Secretary, the General Counsel, and other senior OST officials to discuss, among other things, the status and substance of all of the agency's pending rulemakings. We will add to these meetings

discussions of the operating administration's/OST's retrospective review plans.

c. **Prioritization**.

i. **Factors.** One of our primary goals is the improvement of DOT's rules. Our rules should be clear, simple, timely, fair, reasonable, and necessary. They should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed. This philosophy, the general requirements identified in section IV.a.ii.1., and the general factors listed below have been, and will continue to be, considered by DOT officials in determining the need for retrospective reviews; they are not set out in order of priority:

1. The nature and extent of public complaints or suggestions (e.g., petitions for rulemaking).
2. The need to simplify or clarify regulatory language (e.g., based on requests for interpretation).
3. The need to eliminate overlapping or duplicative regulations.
4. The need to eliminate conflicts or inconsistencies with other rules.
5. The length of time since the last review.
6. The importance or relevance of the problem originally addressed.
7. The burdens imposed on, and the benefits achieved for, those affected and whether they are greater or less than originally estimated.
8. The degree to which technology, economic conditions, or other involved factors have changed.
9. The number of requests for exemption and the number granted.

ii. **Processes**.

1. **Priority determinations.** The processes we use to determine the priority or timing of a review may vary depending on the particular matter. We give some a priority based on an accident investigation or a review of accident or incident data. For example, during an accident investigation, the FAA may decide it has to immediately

take action, based on the agency's assessment of the risk involved. We may give others a priority based on public comment in response to reports such as those described in section IV.a.iii.2, above, where we may provide the public with initial estimates of risk or accident data. We may base some on special, general requests for public comments and/or public meetings, such as the one described under section III. above, in response to E.O. 13563. The public may provide us with good reasons for expediting one or more of the reviews. We base many priorities on the factors set out in the preceding paragraph; for example, a review of the number of exemptions recently granted may justify expediting a review or the time since the last review may warrant scheduling the review by a certain date. Similarly, we may identify a burden imposed on small entities that is no longer needed to achieve a safety objective, and we may decide the size of the burden warrants quicker action.

2. **Other factors.** Our priorities may be affected by other factors, such as budgetary resources, legislative requirements, or judicial mandates. The amount of time it takes to conduct a review and any resulting rulemaking process is dependent not only on budgetary and expert resources, but also very dependent on the complexity of the issues and the research and analyses that must be conducted. For example, NHTSA has found that a major statistical evaluation can use 1,000 - 2,000 hours of staff time, take 1-2 years to complete, and result in a 75-100 page report. In the 1970's, FAA conducted a review of its aircraft certification regulations, which covered 11 of the 73 parts in the Code of Federal Regulations devoted to FAA rules. The FAA provided multiple opportunities for public participation before issuing the first of 8 notices of proposed rulemaking approximating 200 pages each, and then 9 final rules approximating 200 pages each. FAA made approximately 500 changes as a result of this very successful review, but it took 8 years to complete.

3. **Oversight of priorities.** Our retrospective review priorities will also be reviewed during our weekly Regulatory Review Meetings.

d. **Initial list of candidate rules for review over the next two years**.

i. **DOT suggestions for reviews.** We asked each of the DOT operating administrations and OST to identify existing rules for retrospective review in response to E.O. 13563. We asked them to give special consideration to the factors discussed under section V.c.i. and ii.

ii. **Public suggestions for reviews.** As outlined in section III, above, we also invited the public to provide us with suggestions through a number of processes.

iii. **List of suggestions and DOT responses.** Attachment 1 to this report contains a brief description of each of the existing rules suggested by both DOT and the public as well as our response to the public recommendations. The first part lists those that we have decided warrant further action; the second part lists those that need further consideration over the next two years; the third part lists those for which we have determined no further action is appropriate or necessary.

iv. **Existing 10-year plan**. The list in Attachment 1 is in addition to our existing plan set forth in Attachment 2 to this report, under which we will continue to conduct reviews.

e. **Structure and staffing**. DOT's senior official responsible for the retrospective review of the Department's rules is:

Name/position title: Robert S. Rivkin, General Counsel
Email address: Robert.Rivkin@dot.gov

f. **Independence of retrospective review team**. There are a number of steps that we will take to ensure independence in the process of identifying rules for review:

i. **The team**. In some instances, the team analyzing the need to revise or revoke an existing rule may be independent of those who helped prepare the rule. In others, it may not be. We believe that the team reviewing the need to revise or revoke an existing rule may need to include staff who helped to prepare the existing rule. They may be the only experts on the rule and the only experts on the subject in the agency. An agency also may have limited staff available to perform analyses. Based on our experience, those who prepared the existing rule do generally identify a need for a review of, and the need to change, the rule. To ensure our objectivity, we expect our agencies to include others as part of the initial analyses. For example, they will talk with or independently hear from investigators, enforcement staff, or others who can advise on

compliance problems, requests for interpretations, crashes, etc. They are all essential and part of the team.

ii. **Agency oversight**. Senior officials in the agency, often including the Administrator, oversee the process and approve the decisions. They are the ones who will ask about the involvement of others who are implementing the rule, investigating an accident, etc.

iii. **Departmental oversight**. The General Counsel's Office oversees the regulatory process in the Department and, in its review of decisions on retrospective review of rules, will review documents, ask questions, and challenge objectivity where necessary. In addition, senior Departmental officials will also oversee the review process through the Regulatory Review Meetings described above in section V.a. They provide one more level of independent review. Finally, the Department also has a Safety Council, consisting of officials from OST and the operating administrations. The Council is involved in the Department's highest priority safety issues, such as fatigue and its relationship to hours of service/flight and duty rules. It could make recommendations on rules that need restrospective reviews based on its analysis of underlying data.

iv. **Advisory committees**. DOT will also begin using advisory committees to review our plans for the retrospective review of significant rules for those of our operating administration with enough such rules to justify advisory committee involvement – FAA, FMCSA, FRA, and PHMSA (for pipeline rules). This will ensure another level of independent review.

v. **Third-party reviews**. The Department also uses third parties to individually prepare analyses or review agency analyses. Some of the analyses or reports listed in Attachment 3, for example, were prepared by contractors or underwent independent peer reviews. Groups such as the National Academy of Sciences prepare some studies for us on the need for new or changed rules and recommended approaches. We have also received unsolicited recommendations for changes to our existing rules from other agencies and academic organizations and have incorporated their recommendations into our review program.

vi. **Public participation**. As part of its 10-year rolling review and its special reviews, the Department regularly asks for public comment on both the process and schedule for the reviews as well on specific rules. Many of the different elements of the Department also have good relationships with the interests affected by their rules. For example, FHWA has offices in every State and regularly meets with State officials affected by the agency's rules

or with the American Association of State Highway Transportation Officials. Similarly, FTA regularly meets with the American Public Transportation Association, NHTSA regularly meets with the automobile manufacturers and public interest groups, while FAA, FRA, FMCSA, and PHMSA have existing advisory committees that can be used to review retrospective analyses of rules. Through these meetings and committees, we routinely get feedback on what rulemakings are problematic, along with suggested fixes. This process, also, helps ensure the objectivity of our review process.

g. **Actions to strengthen internal review expertise**. DOT staff have significant expertise in the analysis of risk as well as the economic, environmental, energy, paperwork, and other effects of rules. When our expertise is insufficient to address the issues that pertain to a particular rule, we contract with outside experts. We also provide extensive guidance and training opportunities (based on requests or determination of need). For example, we provide a regularly updated document summarizing all of the requirements (and supporting guidance documents) applicable to the rulemaking process. We also provide regular training courses on the rulemaking process that include significant information on the various analytical requirements, legal standards, and retrospective review process. As needed, we have also provided specific training on subjects ranging from economic analysis issues to plain language. We have also used the Regulatory Review Meeting process described in section V.a. to identify staffing problems in the regulatory programs within DOT, and this would include problems with completing retrospective reviews in an effective and timely manner.

h. **DOT plan for retrospective analysis**. The Department will incorporate the changes made in response to E.O. 13563 into the existing process it uses for conducting retrospective analyses. We will also add to our existing retrospective review schedule the specific rules we have identified in response to E.O 13563 and listed in Attachment 1; the agency has either already decided to take rulemaking action to make those rules more effective or less burdensome or will complete its review to decide whether to take such action in the next two years. We will also merge into our existing retrospective review schedule any special reviews that have not already been added. This will provide one schedule for all of DOT's planned or ongoing reviews. We believe this will provide a simple method for the public to track DOT's reviews and make it easier for them to participate in the process. It should also make it easier to obtain effective participation by advisory committees. Finally, it will permit more effective management and oversight of the process by Departmental officials.

i. **Analytical decisions**. Our considerable experience with economic and related analyses, influential scientific information, and retrospective reviews has provided us with knowledge on how to do effective analyses, ensure scientific integrity, and use the analyses in our decision making. We also rely on guidance from the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) and other White House offices.

j. **DOT plan for revising rules**. Throughout this document, we have described our plan, our process, and the modifications we will make to them based on our E.O. 13563 review. At a minimum, every ten years, we create a new schedule of all of our rules in the CFR, and we must review each one over the next ten years. We also use special techniques to compel reviews of particular rules. For example, we have imposed "sunset" provisions when we issued some rules. For others, we have committed to doing a review by a particular date.

k. **Coordination with other agencies**. Coordination of our actions with other agencies is a regular part of our rulemaking and our retrospective reviews. For example, as part of our E.O. 13563 review, we identified the need for rulemaking in an area regulated by the Department of Labor's Occupational Safety and Health Administration (OSHA). We have already contacted OSHA and the agency agreed to the need for our rule to supplant their rule. As another example, in reviewing the need to change existing automobile fuel economy labels, NHTSA and the Environmental Protection Agency decided to do a joint rulemaking to avoid requiring two labels and also included the State of California and the Federal Trade Commission (FTC) in their discussions to maximize the potential that they could eliminate the need for the two labels that California and the FTC separately require. As further examples, the SLSDC regularly coordinates and jointly develops rules governing the St. Lawrence Seaway with its Canadian counterpart; DOT coordinates regularly with the Department of Homeland Security where our rules on safety and security may overlap; and we also regularly consult with the Department of Justice on rules affecting access for those with disabilities.

l. **Peer review of plan.** We have subjected our plan to public comment and ensured that it was carefully reviewed by the highest level officials in the Department and by other agencies in the Federal government. While it has not been subject to a third-party peer review, some of the analyses of existing rules have been, especially when they involve information meeting the standards in OMB's "Information Quality Bulletin for Peer Review," and we would expect to have future analyses of that level undergo peer review. An example of a study that was peer reviewed because it could be used in a future rulemaking to change existing fuel economy standards is the one on "Relationships Between Fatality Risk,

Mass, and Footprint in Model Year 1991-1999 and Other Passenger Cars and LTVs" referred to in Attachment 3.

VI. Components of retrospective cost-benefit analysis

a. Evaluation metrics.

i. **The nature of the review.** The metrics we use vary with the nature of the review. If we decide that a rule needs to be rewritten in plain language, the analysis would be quite different from one reviewing the need for burdensome safety operational rules.

ii. **Metrics and data comparisons.** As primarily safety and environmental regulators, we cannot rely on control groups to compare results. However, DOT does make wide use of the experience of others who have regulated in similar areas. We receive significant data from State and local governments, foreign governments, and international organizations that can help us evaluate such things as the need for a rule, the effectiveness of different alternatives, or the problems with particular alternatives. We also get valuable data from such sources as organizations representing small entities, or agencies such as the U. S. Small Business Administration, who can provide us valuable information on size, revenue, and other metrics that can help us better evaluate the effects of different alternatives.

As an example of state involvement, NHTSA and EPA have been working on a series of joint rulemaking actions involving fuel economy and greenhouse gas emission standards for motor vehicles. We have worked closely on these initiative with California in gathering and analyzing the data on which the rulemakings have been or are based. In another instance, when implementing a statutory mandate, FMCSA checked with State governments who had similar statutes in place to evaluate how effective they were.

DOT also has substantial relationships with our counterparts in other countries as well as international organizations involved in issues with which we are engaged. As a result of our involvement, we can more effectively gather helpful data, exchange "lessons learned," and develop better rules, where they are necessary. For

example, in reviewing the effects of its seat belt rules many years ago, NHTSA considered the option of encouraging States to adopt mandatory seat belt use laws. As part of its analysis, it obtained data on the effectiveness of such laws in other countries. Similarly, when FMCSA was reviewing the effectiveness of its hours-of-service rules and alternatives, it looked at the experience in other countries. In addition, pursuant to the North American Free Trade Agreement and our relationship with Mexico and Canada, we have an increasing number of joint projects for the development of regulatory data and rulemaking documents that should improve the effectiveness of our rules. We have engaged in similar efforts with the European Union in valuable efforts to harmonize our rules. Finally, we have participated in meetings of international organizations to help develop uniform techniques for data gathering and analysis.

iii. **Basis for decisions**. We base our decisions on metrics on our experience with retrospective analyses, with a heavy reliance on OIRA guidance. We will continue to do so and will also add to our website, regs.dot.gov, the list of factors identified in V.b.i. and ask the public for any comments they might have on the factors and appropriate metrics to use in evaluating particular rules in those categories.

b. **Data**. The Department collects significant data on safety, the primary area in which it regulates. We update the data regularly, and the updates are one of the primary sources we use to identify the effectiveness of rules. Among the primary questions asked during the review of new rulemakings -- e.g., at the Regulatory Review Meetings described above in section V.a. -- are how we will measure the effects of those rules, if we do not already get regular data on the problem, and how we will improve the existing data sources.

c. **Experimental or innovative processes**.

i. **Encouragement of new technology/approaches.** DOT strongly encourages the use of new technologies and other approaches to rulemaking that allow for easier adaptation to changed circumstances and other events that would otherwise require new or changed rules. One way we do this is by maximum use of performance standards. For example, when NHTSA determined there was a need to provide extra protection for the driver and front seat passengers in frontal collisions in motor vehicles, it required automatic protection rather than a specific device such as automatic seatbelts or airbags. This also allowed the development of new technology that might be better or less expensive. In addition, NHTSA also encouraged the use of airbags, by allowing

a driver-only bag in the front seat to comply for a short period, because it thought the technology warranted an exception while manufacturers worked further on adequate passenger-side airbags. Another example is the use of special permits or conditions by PHMSA and FAA. These allow regulated entities to use new designs, products, etc., with special conditions attached, if necessary, instead of having to wait for the existing rule to be revised to permit the new design. A similar example in DOT is to allow regulated entities to use an approach different from the rule if the entity establishes to the satisfaction of the Administrator of the agency that it provides a level of safety or protection equivalent to the rule.

ii. **Use of innovative processes**. Based on the good experience the Department has gained through its response to E.O. 13563 and the Obama Administration's efforts to explore web 2.0 technology, we will incorporate IdeaScale into our regular process for public participation on retrospective reviews; we will add to our retrospective review portion of regs.dot.gov a link to the site where the public can submit any comments on the process or specific reviews and engage in discussions with others about their suggestions in an effort to improve on them. We will also continue our work with the Cornell E-Rulemaking Initiative and explore effective ways to incorporate blogging and other tools into retrospective reviews.

VII. **Publishing the Department's plan online**

a. We will publish our plan on our retrospective review page at regs.dot.gov and provide a link to it on our Open Government website.

b. The technical staff person we have charged with updating the plan online is Jennifer Abdul-Wali, Jennifer-Abdul.Wali@dot.gov.

Summary of Attachment 1

DOT has identified 79 regulations, some of which have multiple recommendations per regulation, upon which action will be taken.

- Of note:
  - 27 of these actions would reduce burdens upon small businesses
  - 12of these actions would reduce information collection burdens
  - 13 of these actions would reduce burdens upon state, local, or tribal entites
  - 7 of these actions involve harmonizing/coordinating regulations with government agencies outside of DOT

DOT has identified 55 regulations, some of which have multiple recommendations per regulation that warrant further study before deciding on a course of action to amend the regulations

- Of note:
  - 9 of these actions would reduce burdens upon small businesses
  - 4 of these actions would reduce information collection burdens
  - 17 of these actions would reduce burdens upon state, local, or tribal entites

The following are some noteworthy examples of regulations identified for action:

FRA's Positive Train Control Rule

Based on a review of its positive train control requirements as a result of concerns raised by industry through the filing of a lawsuit, FRA decided that revisions could be proposed that would reduce industry burdens without adversely affecting safety. The agency is currently considering modifying or removing provisions in the rule relating to the alternative route analysis and residual risk analysis used to determine whether positive train control system implementation may be avoided. We currently expect initial installation savings to total between $225M and $400M. Over twenty years, savings (including maintenance) should total between $440M and $1,040M.

DOT's Environmental Rules

DOT maintains an overall agency Order establishing Departmental procedures for complying with the National Environmental Policy Act (NEPA), that supplements the Council on Environmental Quality's NEPA Regulations. In addition, DOT has ten operating administrations (OAs), most with their own formal procedures in either regulation or Order for complying with NEPA. DOT received many public comments during our E.O. 13563 retrospectvie review focusing on ways to improve implementation of NEPA procedures and/or to harmonize areas of perceived inconsistencies between OA NEPA practices. For example,

certain parties recommended that DOT make changes to permit greater use by one OA of another OA's NEPA documents or procedures. We have formed a working group to pursue those and other related opportunities to improve the efficiency and quality of our Department-wide NEPA practices. Among those opportunities is a planned update to the Department's NEPA Order to foster early coordination on multi-modal projects, thus speeding project delivery by eliminating the unnecessary "sequencing" of environmental work.

FAA's Aircraft Certification Rules

The FAA intends to examine recommendations from a manufacturer whose comments indicate that a better "systems approach" to aircraft certification rules would avoid subsequent compliance problems. The comment notes that the FAA frequently needs to clarify and issue guidance after adoption of a rule and asserts that better integration would avoid these problems. Among the specific recommendations is that affected industry members be "given a chance to review the FAA's specific planned language as a proposed rule <u>before</u> it is released for broader public input. This serves as an early means to determine rationally if the requirements are understandable doable, and have a practical means of compliance." [Emphasis in original.] A number of specific regulatory provisions are cited as areas that need a better approach.

While the FAA is constrained by issues of fairness and ex parte communications, there may be ways to ensure additional discussion and communication with industry components early in the development, and the FAA is committed to getting as much useful input as practicable. The FAA's Aviation Rulemaking Advisory Committee (ARAC) and Aviation Rulemaking Committees (ARC's) are important tools in developing the best and most practicable ways of addressing identified safety concerns. To that end, we will be referring the specific recommendations for reform in the certification process to the relevant ARAC/ARC committee.

OST's Aviation Consumer Rules

As part of our E.O. 13563 retrospective review, the Air Transport Association (ATA) suggested that OST regulations, which are contained in 14 CFR Parts 200 through 399, should be reexamined as many of them arose, prior to the Airline Deregulation Act of 1978, in an era of intense economic regulation of all aspects of airline activities. ATA also pointed out that many of these older regulations were not subjected to the cost-benefit analysis and centralized review process that Executive Orders 12866 and 13563 impose today. The Department began a comprehensive post-deregulation review of the OST rules contained in 14 CFR Part 200

through 399 in November 2007 and sought public comment, through the issuance of an advance notice of proposed rulemaking. Our retrospective review revealed that the existing rules are useful but not sufficient and that a stronger and expanded approach is needed. Since that time, the Department has issued two aviation consumer protection rules, one in December 2009 and another in April 2011. Each of these rules made a number of changes to ensure, among other things, that passengers are treated fairly and have accurate and adequate information to make informed decisions when selecting flights. As part of implementing E.O. 13563, we are continuing to evaluate our aviation consumer protection regulations in order to expand on those that work (including filling possible gaps by undertaking new rulemaking where necessary or appropriate) and to modify, improve or repeal those that do not. We plan to conduct a third aviation consumer rulemaking to consider ways to make our regulatory program more effective in achieving our objective of preventing unfair and deceptive practices in air transportation and reducing any unnecessary burdens placed on industry. It would consider, among other things, whether to require that ancillary fees be displayed at all points of sale, to allow consumers to price shop for air transportation in an effective manner.

FTA's Major Capital Investment Rules

As a result of a retrospective review of the rules that govern the "new starts" discretionary funding program authorized by 49 U.S.C. 5309, under which FTA provides funding for rail and other transit projects, the agency decided to consider revisions to the rules to improve the effectiveness of the projects that are funded. The agency published an advance notice of proposed rulemaking on June 3, 2010 to engage the public in a discussion of the many issues involved. FTA intends to propose important changes to its rules that establish criteria for granting funds for rail and other transit projects. These changes may simplify the funding application process and reduce burdens on project sponsors. The intent of the proposal is to result in projects that meet the variety of objectives identified in the authorizing legislation.

FAA Drug and Alcohol Testing Rules

A good example of an action that would reduce burdens for small businesses is an amendment the FAA is considering to 49 CFR Part 120 (specifically §§ 120.117 and 120.225); it would allow Part 121 or 135 operators that also conduct operations under 14 CFR Part 91 that are subject to drug and alcohol testing to combine their drug testing programs without requesting an exemption. This change will remove the unnecessary regulatory and financial burden of having separate testing programs for entities that operate both as certificate holders and separately under part 91, while continuing to ensure the level of safety required by

the rules. Codifying under regulation the exemption relief granted to Part 121 and 135 operators over the past two years would be a burden-relieving, cost-beneficial action for affected air carriers. The FAA believes the vast majority of these operators are small businesses.

FHWA's Manual on Uniform Traffic Control Devices (MUTCD)

A good example of one of our actions that could reduce burdens on State and local governments is changes that FHWA is considering making to the MUTCD. Based on comments from State and local governments that it would reduce their burdens if we provided them greater flexibility to allocate financial resources in meeting compliance dates in the MUTCD, the agency is considering amending certain compliance date requirements and allowing State and local governments to prioritize upgrades based on local conditions and the actual useful service life of traffic control devices.

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
14 CFR 16	FAA	This rulemaking would update, simplify, and streamline procedures for filing and addressing complaints against federally-assisted airports. It would also provide relief by allowing stakeholders and the FAA to handle complaints using modern business practices, including the newly adopted electronic filing process. This action is necessary to reflect the changes that have evolved since Part 16 was implemented in 1996. The intended effects of this action are to improve the efficiency of the complaint and investigation processes, and clarify process requirements for persons involved in enforcement proceedings.	FAA	Rulemaking initiated. RIN 2120-AJ97.	Y	N	Y
14 CFR 91.175	FAA	This rulemaking would amend the FAA´s regulations for landing under instrument flight rules when using a certified Enhanced Flight Vision System (EFVS). Currently, in order to descend from 100 feet above the threshold to touchdown, the operator must see visual references using only natural vision. The intended effect would be to permit operators to use a certified EFVS in lieu of natural vision to continue descending from 100 feet above the threshold to touchdown. This rulemaking would also permit certain operators using an EFVS-equipped aircraft to initiate a flight and to continue an approach when the destination airport weather is below published visibility minimums. This action is necessary to expand operational capabilities and benefits for landing under instrument flight rules when using a certified EFVS.	FAA	Rulemaking initiated. RIN 2120-AJ94.	Y	N	N
14 CFR part 1, Definitions and abbreviations	FAA	Develop a single definition for Category III aircraft operations. The purpose of this rule change is to remove the definitions of *Category IIIa operations*, *Category IIIb operations*, and *Category IIIc operations* from 14 CFR 1.1. The delineated definitions of CAT IIIa, CAT IIIb, and CAT IIIc operations are no longer relevant to current operational practice and create barriers to international harmonization efforts and future minima reductions based on implementation of performance based operations. Determination of landing minima is based on ILS ground system integrity, continuity of service, and flight check	FAA	The FAA intends to initiate a rulemaking project within the next 6 months.	N	N	N

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
		performance classification. There is no distinction between CAT IIIa, IIIb, or IIIc for determination of lowest landing minima. Aircraft are certified for CAT III operations based on reliability and redundancy of aircraft equipment, with no distinction between CAT IIIa, IIIb, or IIIc. Operators are authorized to use their lowest CAT III landing minima based on airborne equipment and low visibility experience, with no distinction between CAT IIIa, IIIb, or IIIc. All references to CAT III in the Code of Federal Regulations are generic references to CAT III, with no distinction between CAT IIIa, IIIb, or IIIc. The approval of Category III ground navigation systems, airborne navigation systems, and the approval of Category III operators will not be impacted by the removal of these definitions. Removal of these definitions will not adversely impact approach and landing operations, and will impose no additional costs on industry. These definitions pose an obstacle to international harmonization efforts, as harmonization agreements will generate the need to update orders, criteria, and guidance, as well as any regulation with a numerical definition that becomes functionally obsolete. The current CAT IIIa, IIIb, and IIIc definitions contain values which may hinder future efforts to implement lower minimums and visibility credit for the use of new technologies such as enhanced flight vision systems, synthetic vision systems, and combinations of the two. This will be a challenge as performance-based operations continue to expand with the implementation of NextGen.approaches.					
14 CFR part 120, Drug and alcohol testing program	FAA	Amend Part 120 (specifically §§ 120.117 and 120.225) to allow part 121 or 135 operators that also conduct air tour operations (defined in §91.147) to combine their drug and alcohol testing programs without requesting an exemption. This change will remove the unnecessary regulatory and financial burden of having separate testing programs for certificate holders, create a cost savings to the industry at large, and continue to ensure the level of safety required	FAA	The FAA intends to initiate a rulemaking project within the next 6 months.	Y	Y	N

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
		by the rules. Codifying under regulation the exemption relief granted to part 121 and 135 operators over the past 2 years will be welcomed as a burden-relieving, cost-beneficial action by affected air carriers.					
14 CFR part 67 Medical Standards and Certification	FAA	Amend 14 C.F.R. § 67.401(j) to remove a requirement for individuals granted the Special Issuance of a Medical Certificate to have the letter of Authorization issued with their medical certificate in their physical possession or readily accessible on the aircraft while exercising pilot privileges. The FAA initially imposed this requirement in response to a 2007 International Civil Aviation Organization audit finding regarding proper endorsement of medical certificates. Retrospectively, and with the specific need for the regulation called into question by affected airmen, the FAA worked with ICAO and concluded that the full effect of the ICAO audit corrective action plan that had been agreed upon at the time of the audit was unintended. Therefore, the requirement for an individual to carry the letter of Authorization in his or her physical possession or readily accessible on the aircraft should be removed. This action imposes no cost and would be well-received by approximately 26,000 medical certificate holders affected.	FAA	The FAA intends to initiate a rulemaking project within the next 6 months.	N	N	N
14 CFR part 121, Operating requirements: domestic, flag, and supplemental operations 14 CFR part 135, Operating requirements: Commuter and on demand operations and rules governing persons on	FAA	Amend 14 C.F.R. §§ 121.579 and 135.93 regarding minimum altitudes for use of autopilot because the current requirements are unduly restrictive. Some of our regulations are focused solely on the use of Instrument Landing System (ILS) equipment and do not allow for leveraging of other technologies such as Ground Based Augmentation System Landing System (GLS), Wide Area Augmentation System (WAAS), and barometric-vertical (baro-VNAV) navigation systems that also provide consistent, accurate vertical path guidance. Changing this rule will enable greater use of the autopilot on GLS and performance based navigation (PBN) approach procedures than is allowed by the current regulations. For example, today you cannot use an aircraft autopilot to descend below the decision altitude on other than ILS approaches.	FAA	The Part 121 and Part 135 changes will be bundled into a single rulemaking project. The FAA intends to initiate a rulemaking project within the next 6 months.	N	N	N

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
board such aircraft		This limitation is operationally significant, especially on approaches with curved path final segments. These proposed changes to operational rules will complement specific changes to certification rule 14 CFR 25.1329 effected in May 2006.					
14 C.F.R. § 25.853(d); 14 C.F.R. § 25.856(a); 14 C.F.R. § 25.856(b); 14 C.F.R. § 25.855(c); Seats Heat Release Special Conditions	FAA	Eliminate the smoke density requirements on interior parts and materials; eliminate the requirement to perform Bunsen burner on components that require heat release testing Specify application of radiant panel requirements to only the predominant insulation construction and not the miscellaneous items attached to the insulation blankets Define that application of the burn-through penetration requirements is only required on the predominant insulation construction and not miscellaneous items attached to the insulation blankets Provide guidance that testing is required only on primary cargo liner material; Eliminate 12 second vertical Bunsen burner test Define criteria for small parts that are exempt from heat releasing test	Boeing Commercial Airplanes	The FAA has tasked the Aviation Rulemaking Advisory Committee (ARAC) to comment on and make recommendations for a threat-based approach to material and component flammability requirements. Material flammability requirements are significantly influenced by considerations of accident mitigation, in which an accident is already presumed to have occurred. Threats are identified and assessed per the requirements to determine if they can be reduced or eliminated altogether. The items suggested are under discussion within the ARAC working group. There is no other research outside the FAA being conducted. The FAA will consider recommendations from the ARAC as a basis for revising the regulations.	N	N	N
14 C.F.R. § 25.831(b)(2)	FAA	Modify the current rule (or develop advisory material) to allow for short term increases in CO_2 concentrations for low power conditions above 0.5% up to 1.5%	Boeing Commercial Airplanes	The FAA is considering revisions to cabin air quality standards. The FAA is awaiting the outcome of the air quality survey and the ARAC recommendations pertaining to this issue. The FAA is prepared to task the Aviation Rulemaking Advisory	N	N	N

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
				Committee (ARAC) to review the 14 CFR part 25 cabin environment regulations, pending receipt of a joint industry-FAA sponsored air quality survey (i.e., via the American Society of Heating Refrigeration and Air Conditioning Engineer, Phase II Study), expected to be published in 2011. The ARAC will consider the commenter's issue.			
14 C.F.R. § 25.981	FAA	FAA did not take a "systems approach" in developing these rules which contributed to significant issues in demonstrating compliance with the rule	Boeing Commercial Airplanes	The FAA chartered the Fuel System Lightning Protection Aviation Rulemaking Committee (ARC) to recommend changes 14 C.F.R. § 25.981 and associated guidance. The FAA is awaiting the final ARC recommendations.	N	N	N
14 C.F.R. part 21; 14 C.F.R. parts 23, 25, 27, and 29;	FAA	Certification of new aircraft and technologies takes too long and costs too much to the manufacturer Markings and placards require complete review to determine whether they are needed and where they should be located for unmanned aircraft Change language regarding markings from "unless there is available in the aircraft" to "unless there is available to the operator"	Northrop Grumman	With industry and public participation, the FAA conducted a comprehensive review of 14 CFR part 23 in 2010 and developed recommendations for change (including the partial elimination of weight classifications, as noted by the commenter). We plan to launch an Aviation Rulemaking Committee (ARC) in January 2012 to provide input on these recommendations by September 2013.	N	N	N
14 C.F.R. parts 23, 25, 27, and 29; 14 C.F.R. §§ 91.155; 91.157; 91.175; 91.183; 91.185; 91.189;	FAA	Reconsider regulations in light of differences in operations conducted by Unmanned Aircraft Systems (UAS) Basic VFR weather minimums: Review regulation in light of new safety-enhancing technologies involving electronic means of "sight" Takeoff and Landing under IFR: Review due to existence	Northrop Grumman	These comments warrant further consideration. In fact, the FAA has undertaken a retrospective review of the existing basis for certification of aircraft, which UAS are obliged to meet, and we are considering what if any additions, changes, or relief may be appropriate.	N	N	N

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
91.191; 91.203; 91.205; 91.211; 91.305; 91.513; 91.525; 91.603		of safer approaches than standard instrument approach depending on design of aircraft IFR communications: Aircraft with no pilot on board should not be required to report unforecast weather that is encountered IFR operations: Two-way radio communications failure does not consider alternate means of communication between pilot and ATC Cat II and III operations: Consider impact of new technology that allows safe landing in atmospheric obscuration – specifically with UAS that are equipped for non-visual landing Flight test areas should be approved for UAS		Operational considerations are being reviewed on an ongoing basis. Standards work, our research, and regulatory consideration relating to UAS will form the basis of any potential updates to regulations to address UAS specifically.			
14 C.F.R. part 23	FAA	Evaluate and streamline the aircraft certification	Aircraft Owners and Pilots Association	With industry and public participation, the FAA conducted a comprehensive review of 14 CFR part 23 in 2010 and developed recommendations. We plan to launch an Aviation Rulemaking Committee (ARC) in January 2012 to provide input on these recommendations by September 2013.	N	N	N
14 C.F.R. part 61	FAA	Change the certificated flight instructor process by requiring proof of currency in lieu of the reissuance of a new plastic certificate with an expiration date	Aircraft Owners and Pilots Association	This comment warrants further consideration. The FAA will consider these comments in the context of other priorities and seek additional input from the public.	N	N	N
Restrictions on Conveyance of Federally Obligated Land	FAA	Investigate ways to make land transfers less onerous for airports	Airports Council International	An airport sponsor's ability to transfer or release federally obligated land is dependent on either the type of conveyance agreement governing the use of federal property or the grant	N	N	Y

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
				agreement providing for land acquisition with federal financial assistance. Congress authorizes the use of both federal surplus and federally owned property for airport purposes. Procedures for the release or transfer of federal property can vary based upon the applicable statute and federal agency involved. In certain cases, the release of federally conveyed land requires Congressional action. Recently the FAA revised its Order 5190.6B, Compliance Requirements in an effort to document the process for releasing the various types of federal surplus and owned property. FAA routinely provides assistance to airport sponsors seeking to release property owned by other federal agencies. FAA acknowledges that release of land acquired with federal assistance for noise compatibility purposes may be a more cumbersome process. Airport sponsors are required to develop noise re-use plans and release land at fair market value no longer needed for noise compatibility purposes. FAA developed these procedures as a result of an OIG audit. FAA is willing to consider revising these procedures subject to OIG concurrence. FAA will meet with ACI-NA to discuss their specific concerns.			
14 C.F.R. part	FAA	Amend the High Density Rule (HDR) in part 93 subparts K	Air Carrier	Congress currently is considering	N	N	Y

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
93		and S to increase competitive options at DCA and LGA	Association	several options for exemptions to the HDR at DCA in the FAA Reauthorization bill. Part 93 currently places operational limits only on DCA, and the operational environment at DCA has not changed since the limits were imposed. The FAA also is considering rulemaking to address congestion management and competition issues at LGA, JFK, and EWR, which currently are limited by FAA Orders.			
Manual of Uniform Traffic Control Devices (MUTCD) Engineering Judgments and Compliance Dates	FHWA	There are five (5) specific areas of concern, four (4) of them collectively would have FHWA revise MUTCD provisions and rules so that a state or local agency could exercise “engineering judgment” with respect to the application in the field of standards in the MUTCD. State and local agencies clearly had such authority under prior versions of the MUTCD. Flexibility granted to states & local agencies to use "engineering judgment" in the field has been significantly reduced in the 2009 version from previous versions of the MUTCD. The fifth recommendation is that FHWA reverse its recent trend of imposing more and more specific compliance dates for requirements that will subject states to increased cost without necessarily improving safety.. FHWA must make changes to the MUTCD to allow state and local agencies to replace signs and devices when they wear out, not before the end of their useful lives. Standards in the 2009 MUTCD are significantly more prescriptive than in prior versions, which can lead to excess costs for state/local/private entities. Examples of problematic requirements include: • Resizing of overhead sign structures to handle questionable message modifications;	American Association of State Highway and Transporation Officials (AASHTO), General Contractors Assn of NY	The FHWA received public comment on the 2009 MUTCD changes to the definition of “Standard” and the use of engineering judgment in the application of traffic control devices. The FHWA agrees that the changes in the 2009 version of the MUTCD have created confusion among users and has initiated a rulemaking to reexamine the definitions within the regulation to provide clarity and necessary flexibility. The FHWA does not anticipate that a rulemaking in this area would have substantial effects on State, local, or tribal governments. The FHWA received substantial public comment on changes to the 2009 MUTCD and the compliance dates for incorporating these new or changed requirements. The FHWA agrees that the many	N	N	Y

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
		• Increasing the number of studies prior to changes in horizontal curve warning signs; • Creation of miscellaneous regulatory sign requirements (e.g., "Higher Fines" sign/plaque); • Adaption of new procedures for the evaluation and measurement of sign retro-reflectance and, subsequently, meet minimum values.		compliance dates in the MUTCD creates a burden on State and local users of the MUTCD and that decisions about the application and replacement of traffic control devices are best made by State and local users based on the average service life of the device. The FHWA has initiated a rulemaking to reexamine its existing regulation to provide clarity and flexibility to MUTCD users by reevaluating the compliance dates requirements in the MUTCD. The FHWA anticipates that any changes proposed in this rulemaking will not require the expenditure of funds, but rather will provide State and local governments with the flexibility to allocate scarce financial resources based on local conditions and the useful service life of its traffic control devices.			
23 CFR Part 668, Emergency Relief	FHWA	The FHWA Emergency Relief (ER) program, administered by USDOT, and the FEMA assistance program, administered by US Department of Homeland Security, are both set up to assist in road repair after a flood. However, the two federal entities have differences in terminology, organization, process, funding and eligibility, all of which leads to confusion, frustration, and loss of funding by township, county and state governments. An alignment of goals and process between the two federal entities would be extremely beneficial. Examples of these inconsistencies include the following: • TERMINOLOGY: Force Account as defined by FHWA	AASHTO	The FHWA initiated a rulemaking in late 2010 to update and revise the Emergency Relief Program. As part of the development of this rulemaking, FHWA will investigate the merits of this comment to determine what, if any, changes might be proposed in the NPRM, and the extent to which additional consultation with FEMA may be necessary. The FHWA anticipates publication of the NPRM by the end of 2011.	N	N	Y

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
		is when a governmental entity does the flood repair work with its own forces and Davis Bacon Wage Rates do not apply. Force Account as defined by FEMA is when a contractor is hired and they must use Davis Bacon Wage Rates and specific FEMA equipment rates. • FUNDING: In order to be eligible for ER funding, a site must have a minimum of $5,000 in damages. In order to be eligible for FEMA funding, there is no minimum amount, but the government entity receives a minimum amount of $60,000. • ELIGIBILITY: ER does not pay for the repair of soft spots due to frost heave; FEMA does pay for repair of soft spots due to frost heave. In addition to the above, two separate teams of inspectors go to each county, one from FHWA and one from FEMA. Both gather information regarding the highway damage. Most county highway staffs are confused by the conflicting documentation requirements and processes. FHWA is looking for estimates of expenses in order to request federal authorization, which may come next year and is reimbursed through the state Department of Transportation; FEMA is looking for receipts and actual expenses in order to immediately process payments directly to the County.					
49 CFR 383.31	FMCSA	The ATA believes FMCSA should rescind its requirement that CDL holders convicted of violating traffic laws in a State other than the one that issued the CDL, notify the State that issued the CDL of those violations.	American Trucking Associations (ATA)	The FMCSA acknowledges the ATA's concerns given that 49 CFR 384.209 requires the licensing agency for the State in which the conviction took place to notify the State licensing Agency that issued the CDL. Both sections 383.31 and 384.209 require that the notifications take place within 30 days of the conviction.	Y	Y	N

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
				FMCSA will consider whether it is necessary to retain the requirement for drivers to self-report out-of-state convictions. A rulemaking to rescind the requirement would reduce the paperwork burden on CDL holders without decreasing safety.			
449 CFR 395.1(g)	FMCSA	The ATA noted that the statutory exemption from the HOS requirements provided for certain motor carriers transporting grapes in New York expired on September 30, 2009, and that the implementing regulation under 49 CFR 395 should be removed.	ATA	The FMCSA agrees with the ATA recommendation and will remove the outdated language. The rulemaking would not have any impact on safety because the regulatory relief provided by the statutory exemption has expired and the carriers transporting grapes have been required to operate without the exemption since 2009.	N	N	N
49 CFR 392.7	FMCSA	The ATA believes 49 CFR 392.7 and 396.13 concerning driver vehicle inspections should be reviewed to eliminate redundancies. The ATA recommends the Agency consider a single pre-trip inspection requirement within 49 CFR 396.13.	ATA	For decades, drivers have been required to note any problems with the vehicle found during the day to allow the following day's driver to verify that any problems have been repaired when conducting a pre-trip review to ensure that the vehicle is in proper working order. The pre-trip review doesn't require any documentation or paperwork. The Agency will review these requirements to consider whether they could be streamlined to reduce burden without reducing safety.	Y	Y	N
49 CFR Part 395	FMCSA	Requests FMCSA address hours of service conflicts for railroad signal employees.	Association of American	FMCSA will soon issue a final rule to codify the statutory exemption	Y	Y	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
			Railroads (Public meeting comment – no docket submission)	provided by the Rail Safety Improvement Act of 2008 (RSIA of 2008). The Act provides that employees of railroad contractors and subcontractors who are engaged in installing, repairing, or maintaining signal systems are now governed exclusively by the HOS laws administered by FRA. FMCSA has issued a final rule to codify the statutory exemption provided by the RSIA of 2008.			
49 CFR Part 395	FMCSA	Union Pacific requested that FMCSA amend its emergency relief provision under 49 CFR 390.23 so that railroad workers who are responding to emergencies such as derailments be included under the relief from the HOS rules.	Union Pacific Railroad	The FMCSA acknowledges Union Pacific's concerns. In 2007 and 2008, FMCSA officials met with representatives of the Emergency Rail Service Restoration Coalition to discuss the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to operators of commercial motor vehicles (CMVs) responding to assist at train derailment sites. The FMCSA continues to believe that its current regulations include appropriate relief for workers engaged in certain derailment recovery activities. The FMCSA does not plan to take any regulatory action on this issue.	Y	Y	N
49 CFR 383.31	FMCSA	Ocean Carrier Equipment Management Association (OCEMA) petition concerning Intermodal Equipment Providers' Maintenance Responsibilities. (ATA)	FMCSA	FMCSA has granted a petition for rulemaking from the industry and the rulemaking team has drafted the NPRM. The rulemaking would	Y	Y	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
				relieve carriers of the responsibility to prepare and submit to the IEP driver vehicle inspection reports when there are no defects or mechanical problems noted by the driver. Drivers would still be required to submit reports anytime there are safety problems with the chassis, and IEPs would still be required to take appropriate action when problems are reported.			
49 CFR Parts 390, 391, 395 and 396	FMCSA	ATA and some of its key members have expressed an interest in the use of electronic signatures. However, the current safety regulations require traditional signatures.	FMCSA	Electronic Signatures (E-Signatures) -- This NPRM would be a follow-up to our recently issued regulatory guidance concerning e-signatures by amending various sections of the FMCSRs to enable the use of e-signatures in support of electronic recordkeeping options. These options would provide significant paperwork reductions and be less burdensome to the industry than the paper records we currently require.	Y	Y	N
49 CFR Part 369	FMCSA	With the elimination of the Interstate Commerce Commission in 1995, certain functions were transferred to the Department of Transportation. This includes the Form M financial reporting requirement for certain for-hire motor carriers of property. The requirement provides no discernible benefits to the government or the industry.	FMCSA	The FMCSA would rescind the requirement for certain for-hire motor carriers of property to file the annual Form M concerning their revenues, profits and losses. As a holdover from the ICC, the Agency currently requires this form annually, but does not use it for data purposes. This burden can be	Y	Y	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
				removed.			
49 CFR Part 393	FMCSA	The FMCSA received a petition for rulemaking to amend its brake system requirements for commercial motor vehicles. The rulemaking would allow carriers to disconnect the brakes on the last axle of a truck tractor being transported as the 3rd unit in a saddlemount arrangement.	FMCSA	The FMCSA has published a NPRM to address the petition. The rule currently requires that these brakes be operable, which can actually create safety concerns and is a burden on industry. This change is something the industry requested based on test track data that proves the change would not have an adverse impact on safety.	Y	N	N
49 CFR Part 383	FMCSA	Commercial Driver's License (CDL) Testing and CDL Learner's Permit Standards – **Strengthening existing rules.**	FMCSA	In May 2011, FMCSA issued a final rule to establish revisions to the CDL knowledge and skills testing standards required by sec. 4019 of TEA-21, and new minimum Federal standards for States to issue commercial learner's permits (CLPs) based in part on sec. 4122 of SAFETEA-LU. The final rule establishes the minimum information that must be on the CLP document and the electronic driver's record. It also establishes maximum issuance and renewal periods, a minimum age limit, address issues related to a driver's State of domicile, and incorporate previous regulatory guidance into the regulations. Finally, the rulemaking addresses OIG recommendations, referenced in sec. 703 of the SAFE Port Act, to			

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				detect and prevent fraudulent testing and licensing activity in the CDL program.			
49 CFR Part 229	FRA	The Association of American Railroads (AAR) suggests that FRA adopt a performance standard in lieu of the daily and 92-day periodic inspections that FRA requires for locomotives. AAR notes that Canada does not require daily or periodic inspections and there is no significant difference between railroad operations in Canada and the U.S.	AAR	FRA is currently engaged in a rulemaking proceeding dealing with the revision of the Locomotive Safety Standards. A notice of proposed rulemaking (NPRM) in the matter was published on January 12, 2011, RIN 2130-AC16, 76 FR 2200. The NPRM specifically seeks comment regarding an extension of the periodic inspection of locomotives with electronic and self-diagnostic equipment. FRA will consider AAR's suggestion when developing the final rule. If FRA decides to extend the interval between the periodic inspection from 92 days to 184 days in response to the AAR's suggestion, the revisions would reduce the regulatory burden on the rail industry and result in cost savings of up to $42 million a year for locomotive downtime (assuming that an hour of locomotive time is worth $100 and that the locomotive would be otherwise in service) and $17.8 million per year for maintenance shop employee wages. The subject of both daily and periodic locomotive inspections was raised and considered by the Railroad	Y	Y	N

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				Safety Advisory Committee (RSAC) Working Group when developing the NPRM. In fact, the Working Group could not reach consensus on modifying the existing inspection requirements. Moreover, the railroads represented at those meetings asserted that they would rather retain the daily inspection requirements for relief in the area of periodic inspections. AAR notes that it filed a waiver petition in 2002 regarding this subject. However, that waiver petition was in abeyance beginning in 2004 at AAR's request based on its desire to work with FRA to develop performance standards related to these inspections. No agreement could be reached on the issue, and the waiver petition was considered closed. AAR also contends that Canada does not require daily or periodic inspections. While this is technically true, Canada does require safety inspections of locomotives before they are placed in service, every 45 days and when they are at various Safety Inspection Locations. Thus, Canada does require frequent inspections of locomotives.			
49 CFR Part 229	FRA	AAR claims that several courts have misinterpreted FRA's regulatory requirement related to diesel exhaust, section	AAR	FRA is currently engaged in a rulemaking proceeding dealing with	N	N	N

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		229.43.		the revision of the Locomotive Safety Standards. An NPRM in the matter was published on January 12, 2011, RIN 2130-AC16, 76 FR 2200. The subject of diesel exhaust was not raised by AAR or any other RSAC participant during the development of the NPRM. AAR has submitted comments on the NPRM that raise this issue. FRA believes that the issue is outside of the scope of the current Locomotive Safety Standards rulemaking proceeding, but intends to discuss the issue in the preamble to the final rule.			
49 CFR Part 40	FRA	Union Pacific Railroad (UP) believes that an electronic recordkeeping option should be available for various recordkeeping requirements found at 49 CFR §§ 45 and 225.	UP	The Office of Drug and Alcohol Policy and Compliance (ODAPC) in OST has been informed of the above UP comments and has already submitted a response addressing them. 49 CFR § 40.45 refers to the Federal Custody and Control Form (CCF). The CCF is owned by the HHS and adopted by DOT for its drug testing program. HHS is working with OMB and the Federal Agencies to develop an electronic version of the CCF. 40.225 refers to the DOT Alcohol Testing Form (ATF). Once HHS develops the electronic CCF, DOT intends to develop an electronic	Y	Y	N

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				ATF by incorporating standards from the electronic CCF.			
National Environmental Policy Act (NEPA)	FRA	FRA is not authorized to accept NEPA documents prepared by FTA or FHWA, and it would be prudent and timelier if FRA could accept these documents as fulfilling FRA's NEPA responsibilities.	North Carolina Department of Transportation	FRA's ability to rely on NEPA documents prepared by other DOT modal administrations varies depending on the type of document. The Council on Environmental Quality (CEQ) NEPA regulations outline the process of adoption of environmental impact statements (EIS) when the adopting agency was not a part of the preparation of the initial EIS. See 40 CFR 1506.3. FRA does not have the authority to alter these requirements. However, FRA has successfully used this process to adopt several EISs prepared by other agencies. Given FRA's expanded responsibilities in implementing high-speed and intercity passenger rail projects, it will be important for FRA to participate as a joint lead or cooperating agency with other modal administrations or agencies where it is likely that FRA will have an action with respect to the covered project. FRA is coordinating with other DOT modal	N	Y	Y

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				administrations on this effort. FRA can and does rely on environmental assessments (EA) prepared by other agencies that meet FRA's NEPA requirements. In these situations, FRA is able to issue its own Finding of No Significant Impact based upon the EA. If the EA is missing something essential for FRA (e.g., a general conformity determination under the Clean Air Act), that can usually be easily remedied through a revised or supplemental EA. FRA does not have the authority to use other agency's categorical exclusions. Categorical exclusions are created by agencies based upon their individual experience in assessing and implementing projects that allow the agency to conclude that a particular category of actions does not typically lead to environmental impacts. The Federal Highway Administration and the Federal Transit Administration have been funding projects for many years and thus have had the time to develop the necessary experience in project implementation that justifies the			

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				creation of their categorical exclusions. FRA's funding programs do not have this long history. FRA has been working to update its list of categorical exclusions (CE) consistent with CEQ's November 23, 2010 Guidance on Establishing, Applying and Revising CEs. FRA has looked to the FHWA/FTA CEs for guidance in this effort. FRA also does not have the authority to use another agency's individual approved categorical exclusion determination, though the information assembled for an approved CE can serve as the foundation for FRA's own decision either through an applicable FRA CE or perhaps as the foundation for a finding of no significant impact. The key is early coordination among the various agencies that have an interest in a particular project to assure that each agency's NEPA responsibilities are met through a coordinated process.			
Emergency Escape Breathing Apparatus, RIN 2130-AC14, 75 FR 61386	FRA	AAR points out the Rail Safety Improvement Act of 2008 (RSIA) mandates FRA to regulate in this area, and that the regulations will probably require technology that will not be cost beneficial.	AAR	FRA is currently engaged in rulemaking related to this issue and will consider AAR's comment in the proceeding.	N	N	N

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Locomotive Cranes	FRA	AAR and Rail Labor believe that OSHA's recently issued regulation related to cranes does not take into consideration the unique scenarios encountered by the railroad industry.	AAR, Rail Labor	FRA is considering a rulemaking effort in coordination with OSHA that would propose to bring the training and qualification of locomotive crane operators under FRA jurisdiction.	N	N	N
Dark Territory Technologies	FRA	AAR points out that RSIA mandates FRA to regulate in this area, and that the regulations will probably require technology that will not be cost beneficial.	AAR	FRA is currently considering different avenues for making policy, including rulemaking, related to this issue with collaboration from rail industry representatives, including railroad representatives, and will consider AAR's comment during its policy making.	N	N	N
Civil Penalties, RIN 2130-AB81, 71 FR 70590, 75 FR 57598, 75 FR 75448	FRA	AAR suggests that FRA's proposal to triple the amount of its civil penalties is not warranted, as railroads have improved their safety records.	AAR	FRA is currently considering the comments received in response to its proposal and will address AAR's concerns.	N	N	N
Risk Reduction Program, RIN 2130-AC11, 75 FR 76345	FRA	AAR points out that RSIA mandates FRA to regulate in this area, and that the regulations will probably require technology that will not be cost beneficial.	AAR	FRA is currently engaged in the early stages of rulemaking related to this issue and will consider AAR's comment in the proceeding.	N	N	N
49 CFR Part 213	FRA	The National Railroad Passenger Corporation (Amtrak) states that regulations governing high-speed track are duplicative and overlapping. Amtrak notes that one set of regulations for track Class 8 governs speeds from 125 mph up to 160 mph, and yet another provision in this section states that operations at speeds above 150 mph are currently authorized by FRA only in conjunction with a rule of particular applicability (RPA) that addresses the overall safety of the operation as a system. Amtrak believes that the speed threshold for an RPA should be 160 mph, to be consistent with the class track speeds.	Amtrak	As this issue relates to comments under consideration in FRA's Vehicle/Track Interaction Safety Standards (VTI) rulemaking, FRA is precluded from addressing the specific merits of Amtrak's comment as it relates to the 150 mph or 160 mph speed range. The VTI NPRM was published on May 10, 2010, and FRA is currently considering the comments that were received. See 75 FR 25928. Yet, FRA has taken the initiative to develop generally-applicable equipment safety standards for	N	N	N

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				these operations through RSAC's Engineering Task Force (ETF) of the Passenger Safety Working Group. Development of such standards would promote regulating the safety of rail operations above 150 mph through other than an RPA. Amtrak is raising a general issue concerning the regulation of high-speed rail operations that has arisen in the VTI rulemaking and in its RSAC high-speed passenger equipment safety standards development efforts through the ETF. While FRA's Track Safety Standards (49 CFR Part 213), as revised in 1998, provide for operating speeds up to 200 mph, FRA's passenger equipment safety standards (49 CFR Part 238), issued in 1999, provide for operating speeds not exceeding 150 mph. Hence, questions have arisen as to how FRA will regulate the safety of an entire system above 150 mph.			
49 CFR Part 213	FRA	AAR states that the GAO just issued a report on rail technology that noted a common belief that FRA regulations are an impediment to the adoption of new track inspection technologies. According to the AAR, the concern is that these technologies are capable of detecting	AAR	FRA has tasked RSAC to examine internal rail flaw inspection procedures and systems, and recommend any necessary regulatory changes. The Track	N	N	N

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		minor defects that are irrelevant from a safety perspective but that, once detected, must be addressed immediately under FRA regulations.		Safety Standards Working Group has in fact reached consensus on proposing modifications to the regulation to allow for delayed verification of certain possible internal rail defects. This modification proposal would be part of a broader set of recommended proposed changes to the regulation that would include new requirements, such as training requirements for rail flaw car detector operators. FRA is currently preparing an NPRM Track Safety Standards: Defective Rails, Inspection of Rail, Inspection Records, Qualified Operator, Joint Bar Fracture Report for issuance by mid-year. The AAR is seemingly referring to FRA's regulations for inspecting rail (§ 213.113), which require that, once an FRA defect is identified, operation over the defective rail not be permitted unless the rail is replaced or specified remedial action is initiated under the supervision of a qualified track inspector. Because rail may develop internal defects that often cannot be detected through visual observation, rail flaw technology is employed to inspect for internal defects; indeed, the more capable the technology is of detecting			

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				internal rail defects, the more likely the requirements of FRA's regulation will be implicated. However, while a "minor" rail defect must be "addressed immediately," FRA does not require that it be "repaired immediately." In fact, the most permissive remedial action provisions currently in place would ostensibly apply to such "minor" defects, including allowing for the rail to remain in service for an extended period. Nonetheless, the regulations do effectively require that once a possible internal rail defect is identified through a rail flaw detector, the railroad must verify whether the defect actually exists "immediately," i.e., before resuming normal train operations over the rail segment. This is the root of the AAR's concern, and FRA does understand this concern. FRA does recognize that under appropriate safeguards, it should be permissible for a railroad to delay verification of a possible internal rail defect. FRA has in fact granted two waivers—one to CSX, and one to NS—to delay verification of certain internal rail defects as part of a pilot program. The pilot programs are testing			

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				methodologies that FRA anticipates could reduce industry cost related to verification. If the results show potential for reducing industry cost and maintaining rail safety, FRA would entertain the possibility of engaging in a rulemaking that would permit the methodology industry-wide.			
49 CFR Part 236	FRA	AAR claims that the recently promulgated positive train control (PTC) regulation is far too expensive. FRA's economic analysis concluded that the costs outweigh the benefits 20 to 1.	AAR	FRA is in the early stages of preparing an NPRM related to PTC that will address AAR's concerns. Specifically, FRA plans to propose the removal of two qualifying tests. As a result, substantial cost savings would accrue largely from not installing PTC system wayside components or taking mitigation measures along approximately 10,000 miles of track. Some of these lines would have qualified for exemption by passing the two tests contained in the 2010 PTC final rule, while others may not have. FRA preliminarily estimates a 20-year net cost savings from eliminating the two tests to total between $590M (discounted at 7%) and $779M (discounted at 3%) and taking into account maintenance savings as well. See also the discussion in the next entry.	N	N	N
49 CFR Part 236	FRA	Metropolitan Transportation Authority (MTA) urges FRA to re-examine the impact of PTC. In addition, MTA believes FRA should address technical changes that affect PTC.	MTA	As noted above FRA will be issuing an NPRM proposing to eliminate FRA is working on two NPRMs related to PTC. The first NPRM will	N	N	N

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				address alternate route and residual risk testing requirements from the rule. FRA estimates that the NPRM will publish on 9/11/2011. See the response above for discussion of potential cost savings for these proposed changes. The second NPRM will address other issues related to the PTC rule, including issues raised by AAR in a petition filed April 26, 2011. Comments related to technical changes would be appropriate in response to the second NPRM. FRA is in the early stages of the rulemaking and does not have an estimated day for publication.			
49 CFR Part 238	FRA	SRC believes that the crashworthiness standards in Part 238 are detrimental to the use and growth of passenger rail transportation. According to SRC, the regulation assumes wrecks to be commonplace, which has not been the case, acts to curtail the export of passenger rail equipment to other countries, and results in prohibitive capital costs for passenger rail expansion and startup in the U.S. SRC states that with the advent of PTC, perhaps the regulation could be revised to enable passenger rail equipment to compete more effectively with other modes of transportation.	SRC	FRA's regulatory approach to passenger equipment safety is balanced and does incorporate both crash avoidance and crashworthiness measures. FRA necessarily considers the safety of the rail system as a whole, beginning with ways first to avoid an accident, such as through adherence to standards for railroad signal and operating systems (to avoid a collision) and railroad track (to avoid a derailment). Yet, FRA is indeed concerned about mitigating the consequences of an accident, should one occur, and crashworthiness features are an essential complement to crash	N	N	N

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				avoidance measures in providing for the overall safety of the rail system. FRA has tailored the application of its crashworthiness standards. See 49 CFR 238 Subpart C, and § 229.141. SRC itself notes that, as a tourist railroad, it is exempt from the crashworthiness standards. Similarly, FRA has established a policy to issue waivers under appropriate circumstances to help limit the impact of these standards on light rail equipment that shares use of trackage or rights-of-way with conventional rail equipment (see appendix A to 49 CFR part 211). FRA has also continued to explore means of making its standards more performance-based. FRA has developed guidelines through the RSAC process for waiver approval to use alternative, performance-based crashworthiness standards for passenger equipment operating at speeds up to 125 mph. FRA is pursuing a similar approach through the RSAC process to develop standards for passenger rail equipment operating at speeds up to 220 mph. FRA's intent has been to develop a set of standards in the alternative			

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				to FRA's structural and occupant protection requirements for railroad passenger equipment operating at speeds up to 125 mph that would provide the same level of safety and yet be more performance based and more technology and design neutral. Consequently, FRA does anticipate that the alternative standards will provide a benefit to the industry to the extent regulated entities take advantage of the additional flexibility.			
49 CFR Part 229	FRA	UP does not believe there is a safety justification for FRA's requirement that the letter "F" be displayed on each locomotive to identify the front end.	UP	FRA is currently engaged in a rulemaking proceeding dealing with the revision of the Locomotive Safety Standards. An NPRM in the matter was published on January 12, 2011, RIN 2130-AC16, 76 FR 2200. The subject of the letter "F" requirement was not raised by UP or any other RSAC participant during the development of the NPRM, but to the extent practicable, FRA will consider UP's suggestion as a late comment to the NPRM in developing the final rule. The letter "F" requirement is related to safety, because it identifies not only the front end of the locomotive, but also identifies all of the locomotives equipment (e.g., wheel R1 is the first wheel on the right side of the locomotive	N	N	N

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				counting from the front end). The identification facilitates recordkeeping related to equipment history. For example, if an inspection finds that wheel R1 is slightly worn out, but not defective, the railroad can note the condition for the next inspection. At the next inspection wheel R1 may be defective.			
49 CFR Part 227	FRA	SRC urges FRA to continue the current exemption to the Occupational Noise Exposure rule, 49 CFR 227.3, for tourist, scenic, historic, or excursion operations.	SRC	FRA agrees that the exemption is appropriate and plans to keep the existing exemption in the regulation.	Y	N	N
23 CFR 771.11	FTA	The use of Categorical Exclusions should be expanded.	America Bikes , APTA, MTA and others	FTA agrees that the categorical exclusion (CE) list should be expanded and will work through the DOT NEPA Working Group to address this issue.	N	N	Y
23 CFR 771.117	FTA	Under current regulations [771.117(c)(3)], bicycle and pedestrian lanes, paths and facilities are listed as not requiring additional NEPA documentation or FHWA approval, yet many states require environmental studies and most require project sponsors to fill out multipage forms requiring sign-offs from numerous agencies to document they qualify for the categorical exclusion. This self-imposed regulatory burden leads to substantial project delays and increased project costs.	America Bikes	FTA intends to revise the categorical exclusions that apply to FTA-funded projects with an aim toward making them clearer and applicable in more circumstances, and will work through the DOT NEPA Working Group to address this issue. However, State requirements cannot be ignored.	N	N	Y
49 CFR 611	FTA	MTA and APTA suggest that FT A relax requirements for agencies that utilize independent contractors to perform a formal multi-layered risk assessment for major capital projects. Risk assessment, although not dictated by any regulatory provision, often serves as an impediment to efficient project management by unnecessarily delaying projects. DOT should amend its practices under 49 CFR 611 to specifically allow for locally developed risk	MTA, APTA	FTA is in the process of reviewing its risk assessment process on transit projects and developing options to streamline the process. Among the options being considered is to give credit to transit agencies that have in-house risk assessment tools/processes	N	N	Y

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		assessment tools that account for local conditions more effectively than those developed by FTA and to specifically allow for relaxed requirements where project sponsors employ independent contractors to assess risk in their major capital projects.		that they apply to their projects or use independent contractors in performing risk assessment on their projects.			
	FTA	Suggestions for improving the New Starts program include: preserving and expanding affordable housing near transit stations through incentives; amending the regulations to achieve livability principles; incorporating new rating factors and criteria; and siting transit projects near existing subsidized housing developments	National Housing Conference, Reconnecting America	FTA published an Advance Notice of Proposed Rulemaking in June 2010 and is preparing to publish a Notice of Proposed Rulemaking. Commenters to the RRR process are urged to comment on the upcoming rulemaking.	N	N	Y
46 C.F.R. Part 221 Foreign Transfers	MARAD	This regulation sets forth the procedure for transferring U.S.-flag vessels to a foreign-flag registry. MARAD has discussed with the EPA the need for self-certification by vessel owners that certain toxic substances are not present on vessels to be transferred to a foreign-flag. The revised regulation would also review the current procedure for transfers to determine if it is the best procedure.	MARAD		N	N	N
46 C.F.R. Part 309 War Risk Ship Valuation	MARAD	MARAD has determined that these regulations are very outdated, as they refer to a Ship Valuation Committee that no longer exists and specify methods for valuation that are not being used by MARAD. Part 390 sets forth the procedure for how the value of a vessel that is lost during support of military efforts would be determined.	MARAD		N	N	N
(Proposed) 46 C.F.R. Part 341 Transportation Priority Allocation System (TPAS)	MARAD	The proposed Part 341 would ensure that, during times of national emergency, maritime assets, such as vessels and intermodal systems, are properly allocated to the most important needs.	MARAD		N	N	N
46 C.F.R. Parts	MARAD	ODS and CDS programs have long since expired.	MARAD		N	N	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
251, 252, 276, 280, 281,282, and 283. Operating Differential Subsidy (ODS) and Construction Differential Subsidy (CDS)		Revision or deletion will eliminate any confusion on the part of the general public as to the status of these programs. The ODS and CDS Programs were subsidy programs for U.S.-flag vessel operators rendered obsolete by the benefits provided by the Maritime Security Program.					
46 C.F.R. Part 327 Administrative Claims	MARAD	The rationale for amending this part is to clearly state the procedures for filing an administrative claim against the Maritime Administration. Part 327 provides the mechanism for filing Administrative claims against the Maritime Administration. An example of a claim that would be covered under this regulation would be a personal injury claim from a contractor or visitor to a MARAD vessel.	MARAD		N	N	N
Adopt Pedestrian Safety GTR Need CFR cites for these new entries	NHTSA	This is in response to the establishment of the Global Technical Regulation(GTR) by the UNECE´s World Forum for the Harmonization of Vehicle Regulations in November 2008 and NHTSA plans to base the new FMVSS on the GTR.	NHTSA	NHTSA is in the process of initiating a rulemaking in response.	Y	N	N
Petition for FMVSS 108 Color Boundaries, 49 C.F.R. § 571.108 (RIN 2127-AK99)	NHTSA	The color definitions in FMVSS Standard No. 108 for lamps, reflective devices, and associated equipment had included color definitions for green and blue. These were removed during a 2007 administrative rewrite of the standard. It has been brought to the agency´s attention by petition that removing these definitions will cause undue hardship on the regulated entities.	NHTSA	NHTSA has initiated rulemaking in response.	Y	N	N
FMVSS 108 – Rewrite Consideration, 49 C.F.R. §	NHTSA	This is in response to petitions for reconsideration of the December 4, 2007 final rule affecting FMVSS standard No, 108; Lamps, reflective devices, and associated equipment, which was an administrative rewrite. It included several	NHTSA	NHTSA is in the process of initiating a rulemaking in response.	N	N	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
571.108		minor technical corrections to the final rule to correct typos and improperly written requirements that inadvertently created substantive changes.					
FMVSS 126 ESC Reconsideration, 49 C.F.R. § 571.126	NHTSA	NHTSA received a petition for reconsideration of the April 6, 2007 electronic stability control final rule requesting that NHTSA amend the language in the ESC final rule regarding multifunction control, two- part tell tales and outrigger to harmonize with the Global Technical Regulation No. 8 Electronic Stability Control	NHTSA	NHTSA is in the process of initiating a rulemaking in response.	Y	N	N
Adopt GTR for FMVSS 205 Window Glazing, 49 C.F.R. § 571.205	NHTSA	There is a GTR which contains updated performance tests for glazing materials that are composed of glass, laminated glass, or glass faced with plastic compared to what is currently in FMVSS No. 205. The updated tests in the GTR would allow manufacturers to achieve efficiencies in the certification process while not degrading safety or imposing new burdens.	NHTSA	NHTSA is in the process of initiating a rulemaking in response.	Y	N	N
FMVSS 210 Force Application Device, 49 C.F.R. § 571.210	NHTSA	There is a new Force Application Device and associated positioning procedure that is easier to use than the current body blocks. Using this device and associated positioning procedure would simplify the compliance test of the standard and make NHTSA´s evaluation of seat belt anchorage strength more effective.	NHTSA	NHTSA is in the process of initiating a rulemaking in response.	Y	N	N
Safety on Garbage Trucks	NHTSA	Rear Visibility - Why in the heck has rear-view cameras not been mandated on Garbage Trucks? In California, the law states that they are only required on all Newly purchased Garbage trucks, after January of 2010. Why is it not required on existing trucks? Is a life not worth $2000 or less? Do you realize how many people/children have been killed by garbage trucks backing up? Children have a fascination with them. Your stupid law on back up alarms only attracts them. They don't know what that means. I	Individual - Ideascale	NHTSA is currently conducting rulemaking in the area of improved rear visibility. We will address this comment in the context of that rulemaking which we expect to publish a final rule by December 31, 2011.	N	N	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
		have many relatives in the Garbage Industry that feel like they are playing Russian Ru-let. Their bosses tell them that even though they have a camera that is broken on their vehicle, it's not required by LAW and it's just a "Luxury". Is your child's life a Luxury? What the heck is going on with you people? Sitting at a desk pushing a pencil does not save lives. Do you not read? PLEASE, PLEASE, PLEASE do something about this, not just for the children, but for the poor Garbage man sitting in Jail because his boss wouldn't fix the Camera and he has to live with this for the rest of his life. After all even though they drive and back up every day, it was just a "Luxury".					
Open data for Safety & Innovation in Cars	NHTSA	If we required carmakers to make much more sensor data read-only and accessible through the Onboard Diagnostic unit, innovators could develop all sorts of powerful tools. Car owners could opt in to give anonym zed data to manufacturers who could spot weird car behavior early.	Individual - Ideascale	In August 2006, NHTSA issued a regulation to establish uniform performance requirements for event data recorders (EDRs) voluntarily installed in light passenger vehicles. The agency's focus in promulgating this regulation was to aid in the investigation into the causes of crashes and injuries. As vehicle electronics and sensors become ever increasingly sophisticated, the agency will consider if these data should be captured by EDRs. NHTSA plans to propose mandatory EDRs in all passenger vehicles in 2011.	N	N	N
FMVSS 126, Electronic Stability Control	NHTSA	Major rule based on effectiveness estimates from a small number of vehicles. Re-examination of effectiveness using a broader group of vehicles and much more data. (CY	NHTSA		N	N	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
for light vehicles		2011)					
FMVSS 201, Upper Interior padding	NHTSA	Examine the effectiveness of a major rule requiring padding or plastic coverings on A-pillars, and other upper interior components. (CY 2011)	NHTSA		N	N	N
FMVSS 138, TPMS survey of tire pressures	NHTSA	Major rule required by Congress even though NHTSA analyses did not show it to be cost effective (CY 2012)	NHTSA		N	N	N
FMVSS 208, Advanced Air Bags	NHTSA	Examine effectiveness of major rule designed to stop children from being killed by air bags. (CY 2012)	NHTSA		N	N	N
Fuel Economy, Survey of Fill up Times	NHTSA	Examine issues related to estimating one of the benefits of better fuel economy. (CY 2012)	NHTSA		N	N	N
49 CFR Part 26 DBE Program	OST	FHWA, FTA, and FAA should all ask for triennial overall goal submission in the same year for a given recipient.	Colorado DOT	It would be a good idea to harmonize the modal schedules, though this does not require a change in the regulation.	N	N	Y
49 CFR Part 26 DBE Program	OST	Different modes interpret reporting requirements differently. This refers to the DBE program report of commitments and achievements.	Colorado DOT	Reporting form is being modified as part of an NPRM currently under development This should address concerns about consistency.	N	N	Y
Markings, Incident Reporting, Special Permits Fitness	PHMSA (Hazmat)	• Marking vans that transport residue IBCs with UN numbers is an unnecessary burden, instead just placard them • Modify the incident reporting requirements: expand exceptions, define spills before transportation, revise immediate notification due to breakage, and preempt states re: separate notices • HM-233B required burdensome changes to special permit applications, delete the list of facilities requirement, delete the chief executive officer info, and delete the estimate of the number of shipments to be transported under the special permit	American Trucking Associations	PHMSA proposed in an NPRM (RIN: 2137-AE46) and is developing a final rule that will address the IBC marking requirement. PHMSA has a long term goal to review existing incident reporting requirements. Additionally, the comments concerning HM-233B will be addressed in a response to appeals and corrections rulemaking (2137-AE73).	Y	Y	N
Rail Routing, PHMSA communication	PHMSA (Hazmat)	• Rail routing rule (Enhancing Transportation Safety for Hazmat - PHMSA-RSPA-2004-18730), no meaningful consultation occurred	National Conference of State Legislatures	PHMSA, FRA, and TSA have taken action to address this concern. In a February 24, 2011 letter from FRA to rail carriers we clarified	N	N	Y

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
				that, in accordance with 49 CFR 172.820(c)(2), railroads must annually solicit information from State, local, and tribal officials. In addition, we provided sample language for all rail carriers to use when soliciting information.			
Miscellaneous Clarifications Rulemaking (PJ-218G)	PHMSA (Hazmat)	The HMR must continually be updated to account for improved technologies and new ways of doing business, eliminate outdated or obsolete requirements, and clarify regulatory requirements experience has demonstrated are difficult to understand or comply with. We will propose a number of miscellaneous amendments to the HMR to eliminate, revise, clarify, and relax certain regulatory requirements.	Corrections Database, Letters of Clarification, and Petitions	Work to develop an NPRM to eliminate, revise, clarify, and relax certain regulatory requirements.	Y	N	N
Miscellaneous Petitions Rulemaking (PJ-219)	PHMSA (Hazmat)	This rule would propose to incorporate into the regulations those petitions for rulemaking that we have accepted that support the regulatory review initiative. The rule will consider those petitions that propose only minor changes to the regulations for clarification, enhanced safety, or economic benefit with no reduction in the level of safety. We will look at more efficient and effective ways of achieving the same goal – safe and secure transportation of hazardous materials in commerce	Petitions	Work to develop an NPRM to consider the adoption of existing petitions for rulemaking that have been submitted to PHMSA's Office of Hazardous Materials Safety.	Y	N	N
Incorporation of Special Permits Rulemaking (PJ-233C)	PHMSA (Hazmat)	Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations so long as an equivalent level of safety is maintained. Incorporation of special permits provides wider access to the regulatory flexibility offered in special permits and eliminates the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety.	Special Permits	Work to develop and NPRM to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record.	Y	N	N
Cylinder Petitions and Special Permits Rulemaking (PJ-234)	PHMSA (Hazmat)	The most significant of these requirements would clarify certain cylinder requalification methods and the manufacturing requirements for certain DOT specification cylinders that are causing confusion to industry. The clarifications and revisions in this rulemaking largely address existing requirements to reduce confusion and	Petitions and Special Permits	Work to develop an NPRM proposing to clarify a number of requirements applicable to the transportation of hazardous materials in cylinders.	Y	N	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
		enhance compliance.					
Editorial Corrections Rulemaking (PJ-244D)	PHMSA (Hazmat)	This rulemaking would correct editorial errors and clarify current language in the HMR. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments would be non-substantive changes that do not impose new requirements.	Corrections Database	Work to develop a final rule to eliminate inconstancies and make minor editorial corrections.	N	N	N
Harmonization with the Regulations of the International Atomic Energy Agency and the Nuclear Regulatory Commission (HM-250; RIN 2137-AE38; Docket No.: PHMSA-2009-0063)	PHMSA (Hazmat)	In cooperation with NRC, PHMSA is developing a rulemaking proposing to amend requirements in the HMR pertaining to the transportation of radioactive materials based on recent changes contained in the IAEA regulations (TS-R-1). The purpose of this rulemaking initiative is to harmonize requirements of the HMR with international standards for the transportation of radioactive materials. Additionally, we are proposing a number of amendments to the HMR that are intended to update, clarify, correct, or provide relief from certain regulatory requirements.	Domestic and International Harmonization	We had plan on publishing an NPRM simultaneously with NRC publication of its NPRM harmonizing NRC requirements with the IAEA. However, due to delays with the NRC companion rule we are moving forward without NRC and plan to publish in May 2011.	Y	N	N
Reverse Logistics Rulemaking (PJ-253)	PHMSA (Hazmat)	We are considering whether and to what extent HMR requirements should continue to apply to return shipments (customer returns to store, manufacturer, or distribution center). We would define the term "reverse logistics" and add a new section § 173.157 for general requirements and exceptions for "reverse logistics." The rule would establish clear requirements for hazardous material products being returned to vendors, distributors, manufacturers, or other persons for credit, recall or replacement.	Petition	Work to develop an NPRM to provide clear requirements for return shipments of hazardous materials.	Y	N	N
Approval and Communication Requirements for the Safe Transportation of Air Bag Inflators, Air Bag Modules, and	PHMSA (Hazmat)	Review air bag requirements to exclude Class 9 air bag inflators, air bag modules, and seat belt pretension from the requirement to enter the EX numbers on shipping papers.	Petition and Approval	Work to develop an NPRM to consider regulatory relief for the shipment of airbag inflators, modules, and seat- belt pretensioners. We plan to publish an NPRM in June 2011.	Y	Y	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
Seat-Belt Pretensioners (HM-254; 2137-AE62; Docket No.: PHMSA-2010-0201)							
NEPA, Pipeline Standards, Brooks Act, Process	PHMSA (OPS)	• PHMSA should incorporate the following standards: ASTM D2513, ASTM F1948, ASTM F1973, ASTM F1924, ASTM F2509	National Society of Professional Engineers	PHMSA will review the adequacy of these standards for incorporation by reference into the PSR as part of its next standards update rule.	N	N	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
23 CFR 710.203 (a) (3)- Funding and reimbursement; 23 CFR 710.307 - Project agreement; 23 CFR 710.501(a) - Early acquisition; 23 CFR 710.503(a) - Protective buying and hard-ship acquisition; 23 CFR 450.216 (State Transportation Improvement Plan (STIP) as it relates to fiscal constraint).	FHWA	Issue: Disruptive to project delivery. These CFR parts requires a state DOT to conduct advance acquisition only before the environmental document is complete, whether or not a hardship has been shown by a landowner due to the project. The CFRs require a state DOT to authorize an entire segment of the project after the environmental document is complete, in order to conduct acquisition. Yet there is often a period of time after the environmental documents is approved, but before design work is completed on every project segment. During that time period, DOTs may not conduct acquisition on a single or a few parcels within a segment. The CFRs could be amended to allow partial right-of-way authorization for one or all parcels within a segment, without the need for the DOT lo authorize the entire segment. Acquisitions could then be conducted between the time the environmental document is approved, but before an entire segment is authorized. Issue: Costly, disruptive to project delivery, burdensome. Current federal fiscal constraint and environmental restrictions make it difficult to strategically identify and preserve future transportation corridors. Until the NEPA process is complete and a corridor is in a fiscally constrained plan, federal funds can only be used to acquire individual parcels that meet the definition of "hardship" or "protective" acquisitions. These exceptions are narrow making it difficult to protect a continuous corridor or strategically acquire parcels from willing sellers until after the NEPA process is completed. We support AASHTO's recommendations to separate the right-of-way acquisition process from the environmental impact process and treat right-of-way acquisition as a "neutral" event from an environmental point of view. Allow states to use federal or state funds well in advance of project construction if the opportunity is there and the	Montana DOT, AASHTO, American Public Works Association, Maine DOT, Community Member (Idea Scale)	The FHWA received extensive public comment on the issue of advance acquisition of right-of-way, most noting that current regulations make it difficult to identify and preserve potential future transportation corridors, and that they otherwise disrupt project delivery. The FHWA also has substantial experience dealing with States on this issue. While the FHWA is constrained by statutory requirements such as 23 U.S.C. 108(c) and CEQ regulations in this area (40 CFR § 1506.1), we believe that a reexamination of the regulations and/or guidance for the advance acquisition of right-of-way may accelerate project delivery and provide States with enhanced flexibility. Further study is necessary to determine specific	N	N	Y

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
		viability of a project would otherwise be threatened. Specify that entire corridors do not need to be part of a fiscally constrained. Long- Range Transportation Plan in order for corridor preservation to advance. This could generate overall project cost savings and reduce significant disruption down the road to project delivery. AASHTO: Current federal environmental restrictions make it extremely difficult to identify and preserve potential future transportation corridors. Until the NEPA process is completed for a transportation project, Federal funds can only be used to acquire individual parcels that meet the definition of "hardship" or "protective" acquisitions. Because these exceptions are narrow, it is difficult to protect a continuous corridor – or even to simply acquire strategic parcels from willing sellers – until after the NEPA process is completed for the entire project, which is not nearly enough time to take full advantage of the potential for reduced cost and reduced community disruption. In addition, corridors must be part of a fiscally-constrained Long-Range Plan in order to use corridor preservation funds. However, due to the large size, scope, and cost of some corridors, State DOTs find it very difficult to include entire corridors in their Long-Range Plan while keeping it fiscally constrained. Requiring entire corridors to be included in a fiscally-constrained Long-Range Plan creates a burden for the State DOTs resulting in limited use of corridor preservation. Recommendations: 1. Allow states to use Federal or state funds to acquire right-of-way well in advance of project construction if the viability of a project would otherwise be threatened. Having appropriate right-of-way in advance does not compel a project to be built—but not having the necessary right-of-way can create significant disruption and/or kill a project.		areas for improvement and what, if any, changes would be most beneficial.			

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		-Modify 23 CFR 710.501 and/or expand 23 CFR 710.503 to allow more flexibility for the use of federal funds “at risk” for corridor preservation, which could then be paid back if the land is not used for the anticipated project. In addition, modify language in 23 CFR 710.203 and 23 CFR 710.305 to allow for the use of federal funding prior to the NEPA document being completed. Since this funding is “at risk” and will be paid back if the acquired land is not used in the final project, 23 USC 108(2)(c)(2)(F) could be interpreted broadly that actual Federal “participation” does not occur until after the NEPA document is complete. 2. Specify that entire corridors do not need to be part of a fiscally constrained Long-Range Plan in order for corridor preservation funds to be used. Amend 23 CFR 710.501 (a) as follows: Property considered as Early Acquisition are properties acquired after the state has included the project in the STIP or other early planning documents required by state or federal or regulation. Any property acquired prior to the project being included in these planning documents is considered to be pre-existing public right of way.					

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23 CFR Part 230	FHWA	COMMENT: This section of the Regulation was written in 1976. Part 230 – External Programs needs revision in order to retain its original intent. Some sections of the regulation discuss issues that no longer exist or that do not have the same meaning in 2011 as they did in 1976. These include: § 230.103 Definitions. Hometown Plan means a voluntary areawide plan which was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended. § 230.115 Special contract requirements for "Hometown" or "Imposed" Plan areas. Direct Federal and Federal-aid contracts to be performed in "Hometown" or "Imposed" Plan areas will incorporate the special provision set forth in appendix G. Subpart C—State Highway Agency Equal Employment Opportunity Programs Source: 41 FR 28270, July 9, 1976, unless otherwise noted. § 230.305 Definitions. COMMENT: The categories included in the definitions of ethnic/racial identifications have changed since these Regulations were first written. Census information now includes bi-racial categories which are not included in the definitions found in our Regulations.	Colorado DOT	23 CFR Part 230, Civil Rights External Programs, has not been substantially updated since it was published in 1975. The FHWA has been considering a full update to this Part for many years as questions and issues from our Division offices, who implement these programs, have increased in frequency. The FHWA believes that reexamining this Part will improve the efficiency of our Civil Rights external programs. The FHWA intends to initiate the rulemaking process within the next calendar year to update this Part. Further study is necessary to identify specific areas for improvement and to determine what, if any, changes would be most beneficial.	N	N	N
23 CFR 635.411,	FHWA	AASHTO, as well as a number of other organizations (ATSSA, ARTBA, AGC, etc.) have concerns that current	AASHTO, American Road	Commenters have concerns that FHWA	N	N	Y

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
proprietary products		federal regulations in 23 CFR 635.411, "Material or product selection," and the current law in 23 USC 112, "Letting of contracts," impose broad restrictions on the states' ability to utilize proprietary methods, materials, and equipment on federal-aid projects and, as a result, limit the development of new products and discourage innovation. As currently regulated, proprietary products are only allowed on federal-aid construction contracts under specific circumstances. The State DOTs' hands are tied when trying to use these products because of "low-bid" requirements. Currently, a new proprietary product that is developed and placed on the market cannot easily be used in highway construction until a "comparable" product is produced. The inability of government agencies to specify a particular product which currently has no "equal" limits innovation by essentially "lowering the bar" for all products in order to artificially produce competition within the market. Often, engineering judgment in the areas of safety and technology is trumped by an accounting policy that is being administered across-the-board without consideration for potential safety improvements and returns on the investment. Recommendation: Amend 23 CFR 635.411 to allow greater flexibility for using proprietary products in Federal-aid contracts by allowing the Secretary of Transportation to approve the use of Federal funds in the payment of patented or proprietary items when the State DOT certifies, based on the documented analysis and professional judgment of qualified State transportation officials, that: • the patented or proprietary item will provide safety, economic, or other benefits along one or more sections of roadway; • no equally suitable alternative item exists; and any patented or proprietary item specified pursuant to this certification will be available in sufficient quantity to complete the project identified in bid documents.	and Transportation Builders Association	regulations governing proprietary products impose broad restrictions on the States' ability to utilize proprietary methods, materials, and equipment on Federal-aid projects and, as a result, limit the development of ne w products and discourage innovation. The FHWA is currently in the process of clarifying existing guidance to ensure competition in the selection of materials, but agrees that a further reexamination of its existing regulations and/or guidance in this area might accelerate project delivery and provide States needed flexibility. Further study is necessary to identify specific areas for improvement and to determine what, if any, changes would be most beneficial.			

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		States have been prevented from using innovative products in federal-aid projects because of the proprietary products rule. Revise the regulation to allow states the flexibility and authority to use cutting edge technologies that will improve safety, durability, and performance of our road and bridge network					
49 CFR 383/384 et al.	FMCSA	Requests that DOT engage other agencies in developing a streamlined credentialing process to address possible duplicative and redundant credentialing requirements with associated background checks for drivers who carry hazardous materials. Where the same information is collected for these credentials, the truckers and agencies bear extra costs of duplication.	Olympia Snowe, Rep. Sam Graves and numerous other Senators and Representatives in a letter to the Secretary dated June 23, 2011.	The Department acknowledges concerns about the redundancies of certain requirements related to transportation security. Currently, the Department's Federal Motor Carrier Safety Administration (FMCSA) requires that all persons seeking a hazardous materials (HM) endorsement for their commercial driver's license (CDL) – required for persons using a motor vehicle, of any size, to transport hazardous materials in a quantity requiring placards – undergo a Security Threat Assessment through the Transportation Security Administration (TSA). And, TSA requires a	Y	Y	Y

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
				Transportation Worker Identification Credential (TWIC) for transportation workers that need to have unescorted access to secure areas of Maritime Transportation Security Act (MTSA) regulated facilities and vessels. Based on TSA estimates of the number of individuals covered by the respective security requirements, the Department believes the population of transportation workers subject to both the hazardous materials endorsement TWIC rules is very limited. TSA estimates 2.7 million drivers are subject to the security threat assessment while only 750,000 individuals require a TWIC, with an undetermined number of truck drivers within the TWIC population.			

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				While the potential overlap appears small, FMCSA will work with TSA to identify opportunities to eliminate redundancies between DOT regulations and the TWIC requirements.			
49 CFR 396.5(b)	FMCSA	The ATA recommends that FMCSA rescind 49 CFR 396.5(b).	ATA	The Agency agrees that there is a degree of redundancy with the general maintenance requirements but the redundancy in language does not result in an unnecessary regulatory burden on the industry in either the actions required of CMV maintenance personnel or the information collection burden in CMV maintenance records required under 49 CFR Part 396. The Agency will consider whether the regulatory language should be revised or amended. However, the rulemaking would not relieve motor	Y	Y	N

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				carriers of their maintenance responsibility or any associated information collection burdens for maintenance records.			
	FMCSA/FAA	Recommends clearly defining the scope of the agencies' jurisdiction vis-à-vis OSHA.	Federal Express Corp. (Public meeting comment – not sent to docket)	The agencies are mindful of the need for clarity in defining regulatory jurisdiction. However, the Agency does not believe a rulemaking action would eliminate confusion about the agencies' jurisdiction.	N	N	N
49 CFR Part 236	FRA	Amtrak asserts that the requirement to inspect and test each locomotive equipped with an automatic cab signal or train stop or train control device is redundant, as all that is needed for a daily or after trip test is a functional test to verify that the system is working properly. Amtrak further asserts that the requirement to perform a complete visual inspection should be moved to the periodic test provisions set forth in 49 CFR § 236.588.	Amtrak	ATK is welcome to submit a rulemaking petition addressing these issues, which FRA would be willing to consider.	N	N	N
49 CFR Part 238	FRA	Amtrak notes that each of these sections provides an exception allowing long-distance intercity passenger trains that miss scheduled inspections and/or tests due to a delay en route to continue in service to the location where the inspection was scheduled to be performed. Amtrak believes that the exception should be broadened to encompass the root causes of en route delays, such as extended delays in arrival or departure, and severe weather conditions.	Amtrak	FRA will endeavor to work with Amtrak to clarify their comment.	N	N	N
49 CFR Part	FRA	UP argues that FRA's requirement related to roller bearing adapters should be eliminated because wayside detectors can identify the amount of wear on the adapter.	UP	FRA recognizes the potential safety value of the wayside	N	N	N

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215				detectors; however, FRA believes there are several concerns with the UP proposal: It is not clear that the detectors would catch all of the same defects that are caught by a visual inspection. FRA does not currently have regulatory requirements related to these detectors. If FRA eliminates the visual brake inspections, there will be no brake inspection requirements. It is not clear how the railroads would identify defective brakes, or how they would comply with the statutory requirements to move cars with defective brakes to the next location where repairs can be made. If these concerns were addressed, a			

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				revision to the regulation that would include wayside detectors may be appropriate.			
49 CFR Part 214	FRA	SRC believes that the relative risk to a lone worker is not ameliorated by the requirement (in 49 CFR § 214.337) for a lone worker to complete a written statement of on-track safety prior to using individual train detection to establish on-track safety (see SRC Comments, issue no. 5, pages 3-4). SRC also believes that the “definitions and exemptions portion of Part 214” needs to be significantly reworked in order to contemplate the railroad operation where the roadmaster may also be the primary locomotive engineer and also the safety officer (see id.).	SRC	FRA believes that the written statement of on-track safety has value in decreasing the risk of death among lone workers. The reasoning behind this requirement, as expressed in the preamble to the final rule on roadway worker protection, is “to assist the roadway worker in focusing on the nature of the task, the risks associated with the task, and the form of on-track safety necessary to safely carry out assigned duties.” 61 FR 65959, 65972-73 (Dec. 16, 1996). Additionally, as discussed in FRA’s Technical Bulletin G-05-03 (issued January 10, 2005), the benefits of a lone worker briefing include “triggering the lone worker to think about his or her on-	N	N	N

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				track safety, providing a means to inform the railroad where the lone worker will be located during a tour of duty," as well as "providing information (e.g., special instruction changes, etc.) to the lone worker" (emphasis added). Because a lone worker is not being supervised on site, it is very important to have the most recent information available and written down so as to minimize confusion. Regarding SRC's concerns with the "definitions and exemptions" section, it is difficult to address such concerns without knowing which definitions or which exemptions are at the heart of the concerns. None of the definitions in subpart A of part 214 specifically references a			

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				locomotive engineer or a safety officer, and none of the provisions in subpart C of part 214 mentions a safety officer. While § 214.321(c) mentions “a locomotive engineer” and § 214.325 provides for the use of “train coordination” with a crew, the use of such terms in the rule would not appear to impact a locomotive engineer who is also serving as a safety officer. As such, FRA cannot offer any remedies at this time other than to note that if the concerns are within the scope of the ongoing rulemaking to amend the roadway worker protection rule, SRC could submit more specific comments on the NPRM when published.			
49 CFR Part 232	FRA	AAR and UP argue that the intermediate brake test requirement should be eliminated where wheel temperature detectors are utilized.	AAR, UP	AAR claims that the detectors that are currently being used by Class I railroads provide more reliable	N	N	N

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				inspections than the out-dated visual inspections required by part 232. FRA recognizes the potential safety value of the temperature detectors; however, FRA has several concerns with the proposal: First, it is not clear that the detectors would catch all of the same defects that are caught by a visual inspection. Second, FRA does not currently have regulatory requirements related to these detectors. If FRA eliminates the visual brake inspections, there will be no brake inspection requirements. Third, it is not clear how the railroads would identify defective brakes, or how they would comply with the			

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				statutory requirements to move cars with defective brakes to the next location where repairs can be made. AAR and member railroads have recently raised this issue in waiver requests to FRA's Safety Board. The Safety Board denied the waiver requests, because the requests failed to identify how the detectors would determine whether a condition recognized by the detector would be a violation under FRA's regulations.			
49 CFR Part 234	FRA	SRC asserts that FRA should not consider the presence of an at-grade rail crossing, a bridge over a public road or navigable waters, or rail operations within a common corridor for the purpose of determining the applicability of FRA's grade crossing regulations in 49 CFR Part 234 to a tourist rail operation. Instead, SRC contends that certain variables, including the specific class of road or highway, the amount of traffic and the danger posed by the specific railroad crossing to the public, should be the primary characteristics considered by FRA for this purpose.	SRC	Generally speaking, a railroad will be subject to the requirements of 49 CFR Part 234 if it is responsible for the maintenance and operation of active warning devices for highway-rail grade crossings that are located on its line. These requirements	N	N	N

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				include minimum maintenance, inspection, and testing standards, as well as reporting requirements and required actions that must be taken in response to certain types of grade crossing active warning system malfunction. To FRA's knowledge, there are very few (if any) railroads who do not have any public highway-rail grade crossings on their lines and who would otherwise be responsible for the maintenance and operation of active warning devices for one or more private highway-rail grade crossing(s) simply because of an at-grade rail crossing, a bridge over a public road or navigable waters, or common corridor rail operations on their			

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				lines. (Also, generally speaking, any active warning device that has been installed at a private highway-rail grade crossing would be covered by a contractual arrangement between the private landowner and the railroad that would address the maintenance, inspection, and testing of such warning device.) However, any railroads that may fall into this narrow category may seek relief through FRA's waiver process set forth in 49 CFR Part 211.			
23 CFR part 771	FTA	Permit separate environmental reviews of related projects	APTA	FTA will seriously consider the suggestion to allow separate environmental reviews of related projects, and will work through the DOT NEPA Working Group to address this issue. The NEPA regulations of the Council on Environmental Quality	N	N	Y

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				intend that all environmental implications of a decision be known before the decision is made. The ban on piecemeal review and approval of a project (also called improper segmentation) is the result. For metropolitan areas with mature transit systems, a more flexible interpretation of what constitutes improper segmentation may be appropriate, as long as it is consistent with the Council on Environmental Quality regulation and case law.			
23 CFR part 771	FTA	DOT should allow projects to proceed beyond the 30 percent design stage prior to issuance of environmental findings. Limiting projects to 30 percent design completion before issuance of environmental findings delays projects and makes them more expensive, without benefit to the environment. For routine projects unlikely to have significant environmental impacts, the 30 percent barrier delays work rather than allowing work to continue concurrently with the environmental review.	APTA, MTA	Final design of a New Starts project must await NEPA completion to ensure that all design elements necessary to avoid impacts have been specified. However, FTA regulations do not specify a fixed percentage of design at which point final	N	N	Y

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				design begins. FTA has the flexibility to allow more than 30 percent of design prior to NEPA completion if the transit agency has committed to all design elements necessary to avoid adverse impacts, and all that remains is concurrence by an outside party such as the State Historic Preservation Officer. FTA will work through the DOT NEPA Working Group to address this issue.			
23 CFR part 771	FTA	Seeks multiple changes to streamline NEPA review process	National Society of Professional Engineers	FTA will work through the DOT NEPA Working Group to address these issues .It is possible that minor language changes could be made subject to the agreed-upon schedule for NEPA reviews. FTA legal sufficiency reviews may not be at issue here. Nonetheless, FTA will seek means of ensuring that all	N	N	Y

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				reviews are concurrent with other actions so that they do not extend the schedule.			
23 CFR part 771	FTA	Streamline Other Aspects of the Environmental Review Process. DOT should allow a single modal administration's finding under the National Environmental Policy Act (NEPA) to cover all modes without adoption by other administrations. Requiring adoption delays implementation, increases costs, and amounts to redundant work for project sponsors and DOT.	APTA, MTA, NPSE	Where one or more modal administration has an action that requires NEPA compliance, each mode must comply with NEPA. But FTA will work through the DOT NEPA Working Group to address the issue of delegating the NEPA review for any multimodal project involving more than one DOT modal Administration to one DOT modal Administration and that it be signed at the OST level for the entire DOT.	N	N	Y
23 CFR 771.11	FTA	Flexibility for design/build projects. By allowing grantees to award CE-eligible design/build projects with federal funds (or pre-award authority) before the environmental finding is made, USDOT would facilitate grantees' ability to pursue non-traditional project delivery methods that help projects be implemented more quickly and result in cost efficiencies. With a design/build project, the in-house design needed to award a contract may not have progressed enough to allow for consultation with outside agencies (e.g., State Historic Preservation Office, Army	APTA, MTA	FTA already allows design-build (DB) contracts to be signed prior to NEPA completion when certain conditions are met: (1) the NEPA contractor and the DB contractor are separate; (2) the DB	N	N	Y

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		Corps, etc.) which is needed for the environmental finding to be made and for the project to be eligible for pre-award authority.		contract allows termination without penalty upon NEPA completion; and (3) the DB contractor cannot perform final design of a New Starts project until the NEPA process has been completed. FTA proposes to publish guidance on this point so that grant applicants are more fully aware of it.			
Guidance, 72 FR 5788, Feb. 7, 2007	FTA	FTA should issue updated guidance on its joint development policies and provide more flexibility to transit authorities to dispose of excess property for the purpose of mixed-income and affordable housing FTA can maximize scarce resources for both transit and affordable housing investments by ensuring that FTA-funded property can be sold, leased or donated for the purpose of mixed income and affordable housing development projects. Local transit agencies could benefit from expanded guidance and technical assistance related to parking replacement on joint development projects. Parking is commonly cited as a significant local challenge to implementing joint development projects. Therefore, FTA should consider providing updated guidance and best practices from the field on effective strategies for managing existing and future parking demand while advancing successful joint development projects.	National Housing Conference	FTA agrees with the commenter. FTA has been and will continue to identify barriers to creating compact, mixed-use, pedestrian-friendly, transit-oriented development. To this end, FTA intends to update its guidance on joint development. FTA appreciates the suggestions about specific topics to address in the updated guidance and will make every effort to include these topics in the guidance. While FTA did away with the requirement of one-	N	N	Y

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				to-one parking replacement in 2007, FTA recognizes the need to provide additional guidance on this topic.			
N/A	FTA	The federal regulations and policies affecting delivery of transportation projects are numerous and spread throughout the Code of Federal Regulations. FHWA has prepared a document, FHWA Form 1273, in which it assembles key federal requirements for construction contracts. We recommend that FHWA assemble a similar document for consulting engineering contracts, and that Federal Transit Agency and other USDOT agencies prepare similar documents for both consulting engineering and construction contracts.	American Public works Association	FTA will examine FHWA Form 1273 and determine its applicability to its operations or if the form could be revised to apply to its operations.	N	N	Y
23 CFR part 771	FTA	The development and application of programmatic solutions to replace project by project analysis, documentation and decision making supports efficient project delivery and environmental stewardship. While extensive progress has been made by states to implement programmatic solutions, the opportunity to achieve major streamlining benefits by stronger promotion of programmatic solutions shows great promise. For example, programmatic criteria for categorical exclusions are often not broad enough to cover all undertakings with a demonstrated history of not having significant environmental impacts.	AASHTO	Categorical exclusions (CEs) are programmatic solutions, and FTA is committed to expanding and improving its lists of CEs. FTA will will work through the DOT NEPA Working Group to address this issue. FTA is also planning to evaluate certain impacts of Federal transit investments programmatically, such as greenhouse gas emissions. In that way, the NEPA document for an	N	N	Y

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				individual transit project can reference the programmatic evaluation and would not have to perform a less useful, project-specific evaluation. An evaluation of a broad impact of transit investments, such as its impact on greenhouse gas emissions and global climate change, is more meaningful and more accurate at the programmatic level than at the project level.			
49 CFR part 661	FTA	In complying with Buy America out of Title 49 regulations, it is apparent that no distinction is made between vehicles purchased from transit specific manufacturers, chassis modified specifically for transit use, and vehicles purchased directly from auto manufacturers and placed into service. The regulations as applied to auto manufacturers need to be reviewed for the current methods of purchasing those vehicles as differentiated from vehicles purchased from transit vehicle manufacturers. Specifically, vans produced by auto manufacturers producing more than 25,000 vehicles a year should be allowed to be certified through a different means than currently provided for.	IdeaShare	FTA is aware of the lack of distinction and will be examining this issue in Buy America rulemaking following the legislative reauthorization process.	N	N	Y
49 CFR 571.121	NHTSA	Suggests that the agency increase requirements in its air brake standard in three areas: 1) trailer ABS – require more axles be controlled by ABS; 2) trailer brake monitoring – require additional monitoring for low air brake pressure, parking brake status, brake adjustment and tire pressure monitoring; and 3) require automatic system to	BENDIX	The benefits of these additional requirements were not provided by the commenter. NHTSA is planning a review	N	N	N

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		control liftable axles instead of driver control.		of FMVSS No. 121 in 2018 and will consider this comment as part of that review.			
49 CFR 571.109 49 CFR 571.139	NHTSA	Suggests that NHTSA delete the resistance to bead unseating test and strength test because they are not effective in evaluating modern radial tires used on light vehicles.	Rubber Manufacturers Association (RMA)	The Agency notes that bead unseating is still a real-world tire failure issue and the agency has observed its occurrence during laboratory testing. NHTSA agrees that a review of these tests is appropriate and has a regulatory review of FMVSS 139 scheduled for 2013.	N	N	N
49 CFR 575.104	NHTSA	Requests NHTSA revise its uniform tire quality grading (UTQG) standards relating to tire traction, treadwear, and temperature requirements.	RMA	Congress placed a condition in NHTSA's 1996 Appropriations Act that stated ‘‘none of the funds appropriated by this Act may be obligated or expended to plan, finalize, or implement any rulemaking to add to [the UTQGS] any requirement pertaining to a grading standard that is different from the three grading standards (treadwear, traction, and temperature	N	N	N

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				resistance) already in effect.'' However, NHTSA would like to study further the likely consequences of discontinuing the temperature resistance rating, and its continued need given the upgraded tire endurance requirements of FMVSS No. 139 before making a decision about future UTQGS requirements.			
Auto Software Transparency	NHTSA	The key to software safety is transparency as in food or other consumer product labeling. You put food in your body and you put your body into a vehicle. You can't label auto software but we should have access to a website cataloging the source code and documentation for all software used in our vehicles, propietary or not. If such information doesn't exist in a complete and accurate form that should be proof enough that the software is not fit for public use.	Individual - Ideascale	The National Highway Traffic Safety Administration (NHTSA) has initiated research on vehicle electronic control systems, focused on electronics reliability and cyber security. The initial portion of the program will review, assess, and synthesize relevant information about approaches, best practices, guidelines, and standards adopted by the automotive and other industries to ensure	N	N	N

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				the reliability of safety-critical vehicle electronic systems, including software.			
Texting Cell Phone Use	NHTSA	The automakers need to install a cell phone signal jammer (blocker) in all new autos. They should have an emergency button that would send out an SOS if you get in trouble	Individual - Ideascale	Signal jammers are illegal under Federal Communications Commission (FCC) regulations. However, there are applications that can be installed on cellular phones to restrict or block features such as voice calls, text, and data transmission while the vehicle is in motion. The National Highway Traffic Safety Administration is currently evaluating these types of systems in a research program.	N	N	N
Texting while driving, New Cell Phone Technology – FDImobile	NHTSA	(WWW.FDIDVD.COM) the new cutting edge cell phone technology even with the new laws, people will still be incline to used their cell phone for business, personal, and other reasons, to be able to send and receive texting, email, auto dialing, with follow me features with only the command of your voice while the driver keeps his hand on the wheel. FDImobile came up with this new technology having a insight the need for this technology to save people lives will be the fore front of a new revolution of	Individual - Ideascale	NHTSA is conducting research and developing Driver Distraction Guidelines for application to in-vehicle device tasks that are performed by the driver through visual-manual means.	N	N	N

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		people using their cell phone in a new safe matter with the idea of keeping the highway safe from distracted driver I believe they cover the three rules of the Law of Distraction visual, manual, cognitive, the driver will be able to keep their hand on the wheel for more information about this service again log onto www.fdidvd.com or hotline 618-355-1615 (317)286-2421 looking to hear from you soon.		When that is complete, the agency will perform additional research studies and develop guidelines for voice interface systems. With respect to specific systems, the agency will not necessarily be evaluating the effectiveness of one company's technology compared to another.			
Examine Software for Vehicle Safety, Not Just Hardware	NHTSA	I've been hearing from various news sources that the groups who are responsible for verifying the safety of vehicles don't have the experience and expertise to examine the newer electronic and computerized components of cars. I've read that actions are being taken to remedy the situation, but I've heard no mention of software. As cars are more and more computerized, the physical components will be more and more under the control of software. It is critical that the government require all car manufacturers to allow some kind of scrutiny of this software code. Companies are notoriously shy about letting people examine their software code, even when errors in that software could cost lives. Without looking at the original software code, it's like examination of a car with the hood welded shut.	Individual - Ideascale	The National Highway Traffic Safety Administration (NHTSA) has initiated research on vehicle electronic control systems, focused on electronics reliability and cyber security. The initial portion of the program will review, assess, and synthesize relevant information about approaches, best practices, guidelines, and standards adopted by the automotive and other industries to ensure the reliability of	N	N	N

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				safety-critical vehicle electronic systems, including software.			
Release data files for vehicle fuel economy and CAFE standards	NHTSA	Making XML or CSV files containing fuel economy data for each model and year and data files for CAFE standards by year available for download would make visualizing data easier. If total U.S. sales for each model and year of vehicle could be collected from car manufacturers, it would make it easier to see how the average fuel economy of vehicles on the road was changing. http://www.fueleconomy.gov/ http://www.nhtsa.dot.gov/portal/fueleconomy.jsp	Individual - Ideascale	NHTSA agrees that making fuel economy data available in Extensible Markup Language (XML) or **Comma Separated Values** (**CSV**) format would make it easier for the public use the data. Because some of this information is proprietary and confidential, NHTSA will investigate what data could be added in one of the formats to the NHTSA CAFE - Fuel Economy web page in the future.	N	N	N
49 CFR Part 26, DBE	OST	FHWA interprets "running tally" of DBE achievements to require monthly reporting. This is too often. This comment refers to the DBE report of commitments and achievements.	AASHTO	The DBE reporting requirement in question is now being considered as part of a rulemaking in progress.	N	N	Y
49 CFR Part 26, DBE	OST	Recipients have a hard time collecting bidders list information required by the rule, especially with respect to age and gross receipts of firms. This collection should be deleted or made optional.	AASHTO	The information can be useful in setting overall goals. Nevertheless, the pending NPRM can ask for comments on the issue.	N	N	Y

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49 CFR Part 37 - ADA	OST	Disagrees with FHWA guidance that says any resurfacing less than 1.5 inches does not constitute alteration calling for additional accessibility features (e.g., curb cuts). This should be on a case-by-case basis.	DREDF	The guidance, which is in the form of an FHWA memorandum to its field offices and state highway agencies, does not specify the 1.5 inch standard for all cases, but rather is an example. Some clarification or further explanation of the guidance might be helpful.	N	N	Y
49 CFR Part 37 - ADA	OST	Concerned about difference between DOJ and DOT definitions of “service animal.”	Passenger Vessel Association	There are differences between the two definitions (DOT’s is somewhat broader) that can be worked out in guidance or in a future rulemaking. DOT is contemplating issuing guidance on this subject in connection with a final ADA rule now being reviewed by OMB.	Y	N	N
49 CFR Part 37 - ADA	OST	Concerned about difference between DOJ and DOT definitions of “service animal.”	Community member - Ideascale	Same as response to PVA comment above.	Y	N	N
49 CFR Part 37 - ADA	OST	Concerned about a “rumor” that DOT now requires service past the curb, which commenter believes has serious cost impacts.	aclements - Ideascale	Current rules, as interpreted by DOT 2005 guidance posted on DOT web sites, require origin-to-destination service for ADA paratransit.	N	N	Y

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				In some cases, if not involving a direct threat to safety or a fundamental alteration of service, this can involve service beyond the curb. This issue is under consideration in a pending rulemaking (RIN 2105-AD54; final rule stage).			
49 CFR Part 37 - ADA	OST	Concerned about FTA interpretation of "pickup window" provision of paratransit rules (i.e., provider can negotiate a pickup time one hour to either side of time requested by passenger) that commenter believes allows 1 hr. 15 min. window rather than simply 1 hr.	pat.civilrights - Ideascale	This provision of ADA rule has long been problematic. To address the issues successfully would require additional rulemaking, which the Department can consider.	N	N	Y
Special Permits and Approvals, Paperwork Burden, Fitness Criteria, Processing Backlog, Over-reach of 49 CFR 107.121 Authority	PHMSA (Hazmat)	• Failure to incorporate proven special permits hurts industry • Unknown fitness criteria dismiss safety records • Fitness procedures were implemented without any consideration of the costs • Processing backlog results in lost business opportunities • Flip-flop on bulk explosive trucks shows unfocused	Institute of Makers of Explosives	PHMSA is thoroughly evaluating these issues. We have been working diligently to improve the efficiency of special permit application processing. We have and will continue to incorporate into the HMR those special permits with a proven safety history.	Y	N	N
Incident Reporting	PHMSA (Hazmat)	• Data collection is deficient, results in unreliable data; needs to be simplified	American Coatings	PHMSA has a long term goal to review	Y	Y	N

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		• Small packages of low hazard, low risk material like paint are a nominal risk	Association	existing incident reporting requirements to determine if there is a benefit in continuing to require incident report forms for all transportation incidents involving a release of hazardous materials.			
Approvals, Special Permits, Registration Fee	PHMSA (Hazmat)	• PHMSA ignores the HMTA rule that to “issue, modify, or terminate a special permit (or approval) must be established by notice and comment rulemaking” • What relevance a motor carrier safety rating has on a company’s ability to re-qualify cylinders under an approval • HMEP grants program should incentivize orgs that positively contribute to the level of skill and knowledge	National Propane Gas Association	PHMSA is thoroughly evaluating special permit and approval concerns raised by this commenter. In addition, we are currently evaluating the HMEP grant program.	Y	N	N
Small Quantity Exception and LPG Special Permits	PHMSA (Hazmat)	• Reconsider the “this package conforms to 49 CFR 173.4” marking for small quantity exception • Allow persons to continue shipping under special permits even if the Grantee has missed the renewal deadline	Kathy Rudd – Ideascale	PHMSA will thoroughly evaluate the commenter’s concerns. However, we note that significant regulatory exceptions have been provided for materials shipped under the small quantity exception. In addition, special permits may continue to be used in transit provided the holder of the permit files for renewal at least 60 days prior to	Y	N	N

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				expiration.			
Cylinder Calibration, Overpressure, CGA IBR, Special Permits, Training	PHMSA (Hazmat)	• Commenter notes that special permits may continue to be used if the permit holder files for renewal at least 60 days prior to expiration (he is correct) • Update CGA Pamphlet IBR materials • Review cylinder calibration requirements, expansion tolerances, and recalibration intervals • Online training is not sufficient to ensure that cylinder testers are qualified	Chris Hinchey – Ideascale	PHMSA is currently evaluating several petitions for rulemaking and considering a future rulemaking that would address the concerns expressed by this commenter.	N	N	N
192, 195	PHMSA (OPS)	• Align 49 CFR 192 and 195 to follow the same formatting. Example: Topic in 195.428 = Topic in 192.458.	Dave Edward Yeager	PHMSA will continually review the formatting of the Pipeline Safety Regulations (PSR) to ensure that it is written in plain language and easily understandable.	N	N	N
LNG	PHMSA (OPS)	• More work must be done in setting guidelines for liquefied flammable gases storage and movement under objective	Ronald M. Thomas	PHMSA will continue its ongoing process to ensure that all of its regulations including those in Part 193 (LNG facilities federal safety standards) are void of conflicts and inconsistencies.	N	N	N
49 CFR 192	PHMSA (OPS)	• Incorporate by reference the latest version of ASTM D2513-09a Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings into 49 CFR 192. • Adjust incident reporting threshold from $50,000 to 100,000 and adjust again every 5 years. • Revise incident definition § 191.3(1)(ii) to address fire first • Align the corrosion inspection requirements of §192.481 with the Leak Survey corrosion	American Gas Association (AGA)	PHMSA will continue to review the issues presented by the commenter and look for ways to address their concerns in the safest and most efficient manner possible.	N	N	N

* Does future action have the likely potential for positive effects on small businesses (SB), information collection burdens (IC), or state/local/tribal entities (SLT)?

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
		requirements of §192.723. • Remove the Continuing Surveillance language in §192.613. • Damage prevention applies to all classes, remove "Class 3 or 4 locations" in line marker provisions of § 192.707(b)(2) • Align time lapse requirement for alcohol testing with the drug testing requirements. • Eliminate overlapping 6 month welding requirements (§ 192.229(b)) and let (c) and (d) stand alone. • Expand the exemption in 49 CFR §192.503 General Requirements to include short pipeline main replacements. • Modify § 192.285 (c) allow for requalification to be done annually, not to exceed 15 months, • Allow gas utilities to design, install, and operate new polyethylene piping with operating capacities consistent with the capabilities of modern plastic materials without compromising safety. (0.32 to 0.4)					
190.341	PHMSA OPS	Adopt provisions for renewal of expiring Special Permits	PHMSA	PHMSA will further investigate this issue to determine whether future regulatory action is appropriate to address commenter concerns.	Y	N	N
191.27/195.57	PHMSA OPS	Eliminate Offshore Pipeline Condition Report	PHMSA	PHMSA will further investigate this issue to determine whether future regulatory action is appropriate to address commenter concerns.	N	Y	N
192.7	PHMSA OPS	IBR the 2009 edition of ASTM D2513-Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings section A1.3.5 Color and UV	AGA Petition	PHMSA will further investigate this issue to determine whether	N	N	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
		Stabilizer to replace the edition already IBR		future regulatory action is appropriate to address commenter concerns.			
192.107 & Appendices A & B Sec. II	PHMSA OPS	Request for amendment of Part 192, appendix A and appendix B (sec. II) and 192.107 to allow hardness testing as an alternative to tensile testing for determining the yield strength of gas line pipe of unknown yield.	GPTC Petition	PHMSA will further investigate this issue to determine whether future regulatory action is appropriate to address commenter concerns.	N	N	N
192.121 and 123	PHMSA OPS	Request the revision of 192.121 and 123 to permit use of polyamide 12 pipe at higher pressures. *Amended petition submitted 1/18/11 both petitions attached*	Evonik-Degussa AG/UBE Industries Petition	PHMSA will further investigate this issue to determine whether future regulatory action is appropriate to address commenter concerns.	N	N	N
192.133	PHMSA OPS	Petitions for the efficacy of the .4 design factor for modern PE piping	AGA Petition	PHMSA will further investigate this issue to determine whether future regulatory action is appropriate to address commenter concerns.	N	N	N
192.503 & 192.619	PHMSA OPS	Petition for sections 192.619 & 192.503 to be amended to exempt tie in section of steel piping from the requirements of 192.513.	GPTC Petition	PHMSA will further investigate this issue to determine whether future regulatory action is appropriate to address commenter concerns.	N	N	N
192.502 and 192.505(d)	PHMSA OPS	GPTC is petitioning PHMSA to amend 49 CFR §§ 192.502 and 192.505(d) to exempt certain components other than pipe from the strength test requirements of Subpart J	GPTC Petition	PHMSA will further investigate this issue to determine whether future regulatory action is appropriate to address	N	N	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE	SB*	IC*	SLT*
				commenter concerns.			
192.513 & 192.619	PHMSA OPS	Petition that 192.513 & 192.619 be amended to exempt tie-in sections of plastic piping from the requirements of 192.513.	GPTC Petition	PHMSA will further investigate this issue to determine whether future regulatory action is appropriate to address commenter concerns.	N	N	N
192.937	PHMSA OPS	Flex in scheduling gas transmission IM assessments	PHMSA	PHMSA will further investigate this issue to determine whether future regulatory action is appropriate to address commenter concerns.	N	N	N

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REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE
		Wants DOT to withdraw 2005 guidance concerning accessibility issues.	APTA	The guidance was properly issued and properly applied as guidance – not as new regulatory mandates – by DOT. Some portions of the guidance (e.g., with respect other power-driven mobility devices) to are likely to be modified as the result of pending rulemakings.
		Maintain or strengthen existing rules and guidance.	Disability Rights Education and Defense Fund (DREDF)	No action needed in order to meet this request.
		Concerned about use of other power-driven mobility devices on pedestrian and bicycle trains.	dean9080 - Ideascale	This is covered under DOJ, not DOT, ADA rules.
		Paratransit providers should not be allowed to deny service in a particular type of vehicle needed by people with some specific medical conditions. Suggests amendment to sec. 37.121 (a) to correct problem.	pat.civilrights - Ideascale	DOT has interpreted rules not to require paratransit providers to provide a specific type of vehicle tailored to an individual's specific disability, on basis that this would be a fundamental alteration of services.
		Currently, all employers in a given industry must meet the same random testing rate for their employees (50%, in the case of the motor carrier industry). OOIDA suggests a bifurcated system, in which drivers who had tested negative 5 times in a row would only have to be tested at a 25% rate. OOIDA believes this would be more cost-effective without diminishing safety. OOIDA asks for an FMCSA pilot program for this idea.	Owner-Operators Independent Drivers' Association (OOIDA)	This idea would greatly complicate the administration of the drug testing program, as employers would have to maintain two separate random pools. More importantly, it would also reduce the deterrent effect of the program, as some drivers would accurately perceive that they had a smaller likelihood of being caught for using illegal drugs. Adopting the idea for motor carriers, even in a pilot program, would have unintended consequences for other modes. It is important to keep modal requirements consistent.
14 C.F.R. § 25.831(g)	FAA	Modify the current paragraph (g) to read as follows: "airplane design must accommodate any environmental control system failure condition not shown to be extremely improbable."	Boeing Commercial Airplanes	The FAA tasked ARAC to review 14 CFR 25.831(g) for harmonization with other authorities' standards. ARAC developed an international consensus of airplane manufacturers (including Boeing), regulators, pilots, and flight attendants to propose a new regulation and means of compliance. The commenter's proposal is not consistent with the results of the ARAC consensus.
14 C.F.R. § 25.841(a)(2)	FAA	Modify paragraph (a)(2)(3) to exclude engine failure; Add subparagraph (a)(4) to state: "in the event of an	Boeing Commercial Airplanes	The FAA tasked the ARAC to review 14 CFR 25.841(a)(2) and (3) for harmonization with other authorities' standards. ARAC developed a

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		engine failure, the cabin altitude time history must be shown to provide continued safe flight and landing capability.”		consensus of airplane manufacturers (including Boeing), regulators, and pilots to propose a new regulation and means of compliance. ARAC initially considered eliminating consideration of the threat of a rapid depressurization from an uncontained engine failure event, but the proposal did not have majority support.
14 C.F.R. §§ 25.795; 25.809(a)	FAA	FAA did not take a “systems approach” in developing these rules which contributed to significant issues in demonstrating compliance with the rule.	Boeing Commercial Airplanes	14 C.F.R. § 25.795 is the result of an ARAC recommendation and is harmonized with ICAO and EASA standards. The FAA is working with EASA to refine the requirement and then harmonize the standards. While the FAA is authorized to amend the airworthiness requirements in whatever manner deemed necessary by the Administrator to provide assurance of an acceptable level of safety, if good cause exists to deviate from international standards, we would consider amending the regulations. However, in this case the international standards were developed by a consensus of the aviation community at large, including the FAA. Thus, harmonization with international standards best serves the mission of the FAA in assuring an acceptable level of aviation safety, and minimizes compliance costs to industry by standardizing regulations abroad.
14 C.F.R. part 93, subpart B	FAA	Eliminate the DC SFRA	Aircraft Owners and Pilots Association	The FAA does not believe part 93, Subpart V is appropriate for regulatory review. The reasons/justifications for establishing the DC SFRA requirements continue to exist today.
14 C.F.R. part 101	FAA	Applicants for waivers should be subject to an evaluation of all potential impacts on flight operations including VFR; require notice and comment for applications for waivers	Aircraft Owners and Pilots Association	The FAA does not believe part 101 is appropriate for regulatory review. The current regulation allows for evaluation of impacts to the NAS as part of the waiver process and there is an existing process for waiver requests which solicits input.
14 C.F.R. § 61.129	FAA	Remove “complex aircraft” requirement from aeronautical experience requirements for commercial pilot	Aircraft Owners and Pilots Association	The FAA proposed a change to the “complex aircraft” requirement in a 2009 NPRM. The FAA is continuing to review the regulation to determine what aeronautical experience requirement would be most beneficial to commercial pilot applicants.

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14 C.F.R. part 47	FAA	Eliminate expiration date printed on aircraft registration document and allow for an online validation of information	Aircraft Owners and Pilots Association	The expiration date was only recently added to the Aircraft Registration through rulemaking which went into effect October 2010. Before that date, the registration did not expire. The FAA is currently in the process of re-registering all aircraft, which will occur over the next 3 years in a phased manner. Following that period, all aircraft registrations will be renewed every 3 years. Re-registration and renewals can be done online if there are no changes to the registration and the owner has the option to pay online with links provided to pay.gov.
14 C.F.R. § 25.803	FAA	Establish panel to examine and develop a method for assessing the evacuation capability of aircraft	Association of Flight Attendants – CWA, AFL-CIO	The FAA relies on a number of design requirements in addition to § 25.803 to provide an effective system for evacuation in an emergency, including aisle width, passageways from the aisles to the exits, not-to-exceed distance limitation between exits, minimum illumination levels along the escape path, stringent performance standards for emergency exits and escape slides, required space for flight attendants at the exits, etc. Although we have ongoing research in the area of evacuation, we have determined that our existing certification methods provide an acceptable level of safety. The FAA is currently sponsoring research in the following areas: 1. Analytical modeling of evacuation and egress 2. Improved occupant survivability of post-crash fire 3. Improved evacuation aids and equipment for informing passengers evacuation procedures The FAA develops regulations based on experience and knowledge gained from past accidents and analysis and research of potential future threats. The level of safety in any regulation is primarily based upon whether the requirements address known past issues and problems as well as those we predict are likely to

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				arise. The FAA has amended the evacuation and egress regulations after every major accident in which we identified new issues in these areas. The FAA believes the regulations address these threats adequately and thus consider the current level of safety provided by the regulations to be acceptable.
14 C.F.R. part 25; 14 C.F.R. § 121.1117	FAA	Review the flammability reduction rule for redundancy, excessive burdens on industry, and cost-effectiveness	Air Transport Association	The FAA continues to regard flammability reduction on the entire affected fleet, including those airplanes that must be modified via retrofit, as a critical element in reducing the risk of future fuel tank explosions to an acceptably low level. The acceptable level of risk for any catastrophic outcome such as a fuel tank explosion is that it is not anticipated to occur in the life of the transport airplane fleet. FAA assessment of the risk and development of the standards to reduce the risk to this level is described in detail in the Reduction of Fuel Tank Flammability in Transport Category Airplanes Notice of Proposed Rulemaking (70 FR 70922). The FAA acknowledges the retrofit kit “price” information added to the rulemaking docket in August 2010 is higher than the kit “cost” estimate in the final rule regulatory evaluation. When developing the final rule, the FAA estimated that 1.8 accidents would occur over a 25-year period without the rule in place. The final regulatory evaluation for this rule estimated net benefit losses of $355 million (73 FR 42444); however, the FAA proceeded with the final rule because of the substantial probability of another accident. The increase in kit cost does not affect the risk of an accident, so we do not intend to reevaluate the regulatory costs and benefits.
14 C.F.R. part 26	FAA	Review practices for employing part 26	Air Transport Association	The FAA regards part 26 as beneficial to aviation industry, as it ensures operators receive the data and support they need from the design

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				community to comply with the accompanying part 121 rules. The FAA recognizes the addition of part 26 adds complexity to the rulemaking process, but we also believe it makes the process more integrated and systemic. We will continue to adjust and modify our approach to scheduling the effective dates in the part 25, part 26, and part 121 to ensure operators receive the information they need in a timely manner.
FAA-2010-0997 (NPRM)	FAA	Examine ways to streamline and harmonize SMS among FAA's various lines of business	Airports Council International	The FAA agrees with the suggestion to harmonize and coordinate Safety Management Systems (SMS) within the FAA. SMS is a high priority for the FAA. The FAA has established the Safety Management and Research Planning Division within Aviation Safety that coordinates and better harmonizes the four SMS effort, including Air Traffic, Aviation Safety, Airports, and Commercial Space. In addition, FAA has a committee of senior executives from these major lines of businesses that meet to coordinate SMS rulemakings, projects and policy. SMS requirements and needs, while similar at a high level, differ considerably between airports, air traffic, and the certificate holders of the NAS. While the SMS efforts throughout the agency cannot be identical, the FAA works to ensure that SMS efforts are consistent.
Airports Geographic Information System (GIS) and Electronic Airport Layout Plan (eALP) Program	FAA	Review scope of GIS/eALP program and associated survey requirements and assess ways to lessen burden that unfunded mandate imposes on airport sponsors	Airports Council International	The FAA acknowledges that there were initially some increased costs as the consulting community learned the new requirements. However, the FAA routinely provides AIP funding for survey and related costs in connection with AIP-funded projects as well as airport master plans and Airport Layout Plan (ALP) updates. Moreover, by conducting these surveys at a higher level of accuracy and by standardizing the methodology and data storage format, airports will no longer have to repeatedly collect the same types of data. Therefore, the FAA's standards do not represent an "unfunded mandate" - on the contrary, over time this transition will save

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				airports money. Nevertheless, the FAA does acknowledge that it would be helpful to continue presenting and explaining this to industry stakeholders.
Passenger Facility Charge Rules; 14 C.F.R. part 158	FAA	Withdraw or limit applicability of Program Update and permit airports to rely on existing information to document project costs over $10 million; Modify policy regarding “substantially compete” applications to permit consideration of supplemental information during 120-day internal application process; Treat 6-month threshold in agency Order as advisory; Amend part 158 to treat request of use authority as an amendment to previously approved impose-only project applications	Airports Council International	The FAA appreciates the level of care that went into preparing these comments and will review the referenced guidance documents to determine how best to address and potentially mitigate the concerns expressed. All but one of the suggested changes relate to the FAA’s guidance or policy rather than to the regulation itself. The other comment (use authority/ application approvals) by itself, while raising one processing issue, does not rise to the level for reviewing the regulation at this time. However, the FAA will consider all of the comments as part of a comprehensive review of the PFC program over the next 18 months (pending availability of funding). We will seek industry input as part of that review before making a decision whether an update to the regulation is warranted and necessary.
14 C.F.R. § 61.23 14 C.F.R. § 91.171	FAA	Expand use of drivers license and medical certification beyond that of sport pilot Allow additional operational test methods for VORs	Aircraft Owners and Pilots Association	The FAA will consider these comments in the context of other priorities.
14 C.F.R. § 25.831	FAA	Require installation of bleed air cleaning and monitoring equipment to remove oil particulate and semi-volatile and volatile compounds from bleed air before its supplied to the cabin and flight deck	Association of Flight Attendants – CWA, AFL-CIO	The FAA is considering revisions to cabin air quality standards. The FAA is prepared to task the Aviation Rulemaking Advisory Committee (ARAC) to review the 14 CFR part 25 cabin environment regulations, pending receipt of a joint industry-FAA sponsored air quality survey (i.e., via the American Society of Heating Refrigeration and Air Conditioning Engineer, Phase II Study), expected to be published in 2011. The ARAC will consider the commenter’s issue.
14 C.F.R. parts 121 and 135	FAA	Amend flight and duty regulations to account for available scientific research and professional experience	Association of Flight Attendants –	The FAA will consider these comments in the context of other priorities.

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		Apply OSHA regulations to crewmembers Require passenger notification of pesticide spraying on aircraft Limit size and number of carry-on bags	CWA, AFL-CIO	
14 C.F.R. § 121.467 14 C.F.R. parts 121 and 135	FAA	Amend existing flight and duty rules to account for available scientific research and professional experience of government and aviation industry representatives; Initiate rulemaking on the occupational health and safety recommendations of FAA/OSHA Joint Team	Association of Professional Flight Attendants	The FAA will consider these comments in the context of other priorities.
Preferred Alternative to Higher Level of Detail (Section 6002)	FHWA	FHWA should allow a state to develop the preferred alternative to a higher level of detail without requiring FHWA's individual, project-by-project approval. The requirements for developing the preferred to a higher level of detail should be defined in standard procedures so that individual project-level approval is not needed.	AASHTO	This proposal is not recommended. The key question is whether developing the preferred alternative more fully would cause, in the mind of the NEPA decision makers, an imbalanced comparison among alternatives because of time, money, or energy expended. The Federal lead agency must be confident that the lead agencies will be able to make a different choice of alternative, if warranted, at the end of the NEPA process. The use of this SAFETEA-LU provision must not result in "pro forma" treatment of alternatives other than the preferred alternative.
23 CFR Section 635.413	FHWA	Expand the warranty provisions for design-bid-build projects to cover entire projects (i.e., allow "general project warranties"), which are currently allowed for in design-build projects; and Encourage more performance-based contracting by extending the allowable time period from "1 to 2 years" to "up to 10 years," to better determine whether the product being purchased with public funds performs as intended.	AASHTO	The statutory prohibition on participation in routine maintenance may conflict with a provision to maintain an entire project for an extended time period. Based on the industry's opposition to such clauses in the 1995-1996 rule making period, substantial opposition to long term workmanship and material warranties still exists and most likely would increase a contractor's risk and bid prices. FHWA is encouraging performance based contracting under the Highways for Life and SEP-14 initiatives. No regulatory action is necessary.
Mainstream Successful Innovation SEP-14 and	FHWA	FHWA could streamline the process for having SEP-14 and SEP-15 experiments become standard practice. Also, FHWA should become a clearinghouse of innovative practices that have worked well in the SEP-14	AASHTO	FHWA is proceeding with the evaluation of SEP-14 and SEP-15 on an experimental basis under the authority of Title 23 USC 502(b). There are no statutory procedures for moving promising

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SEP-15.		and SEP-15 processes		new project delivery methods, contracting methods, or other techniques into operational practice. In the recent past, FHWA has utilized the rule making process to move the design-build project delivery method from an experimental phase to an operational phase (as required by Section 1307(c) of the Transportation Equity Act for the 21st Century). In the future, we will consider the benefits of issuing directives or rule makings for proven techniques when adequate evaluation has been performed
Provide States with Additional Flexibility using Highway Bridge Program (HBP) Funds	FHWA	Change Federal eligibility rules for the Highway Bridge Program (HBP) to allow use of HBP funds for bridge deck rehabilitation or replacement when only the deck is structurally deficient, and to categorize rigid overlays as a preventive maintenance activity. This request is only for more flexibility in use of HBP funds in support of sound bridge system preservation and not a proposal to change allocation or distribution of HBP funds from state to state or state to local agencies. HBP funds have to be used for a replacement structure, but if that replacement adds capacity, the added capacity portion has to come from another funding source, e.g., NHS or IM. Today it is rare that a new structure with a life of 50+ years is replaced "in kind." Most have some added capacity needs. It would be beneficial to have this restriction removed. HBP funds can only be used for the replacement of a structure. It could be possible that a whole new structure on a new alignment could alleviate pressure on, and give additional service life to, an existing structure. However, HBP funding is not eligible for anything but a replacement of an existing structure. • In some cases, the use of bridge funds for minor approach work is allowed. If additional road work associated with a bridge replacement or rehabilitation were to be included as an eligible use of HBP funds, the additional flexibility could increase usage.	AASHTO	No regulation change is needed to address the comment regarding eligibility of structurally deficient bridge decks. They are already eligible per FHWA policy. No regulation change is needed to categorize rigid overlays as a preventive maintenance activity. As long as a systematic approach is applied, rigid overlays can currently be considered preventive maintenance. The systematic approach is required by law, not regulation. No regulation change is needed to address the added capacity issue. Capacity can be added to a bridge that is otherwise eligible under the HBP. No regulation change is needed to address the issue of using HBP funds to build a new structure on new alignment, as long as the alignment serves the same purpose and is within the same general corridor. HBP funds can be used for activities other than replacement. No regulation change is needed. No regulation change is needed to address the approach work issue. There is a great deal of latitude allowed in determining eligible costs for approach work.

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		• Use of HBP funding is tied to the NBIS rating system which has its own set of problems. Currently, a structure must have a poor rating prior to programming a project. This means a structure is already in distress or the programming becomes a numbers game. There is value in assurances that the "worst is fixed first," but states should be allowed to develop and program bridge work on a system basis with minimal added NBIS criteria. • It is assumed that the "on/off system" fund distribution requirement was originally placed to assure a sharing of the revenue. However, at its most basic level, SHA's should be allowed to manage and balance the available revenue versus needs as they see fit – without added constraints. Further, with all the federal restrictions, many LPA's would consider it a benefit to receive state-only funds and defer the federal revenue to SHA's. However as the law is currently written, a change in apportionment is not a viable option. • HBP pro-rata share is fixed at an 80/20 percentage without regard for project type. It would be beneficial to increase the federal participation for Interstate Bridges to 90/10, like it is for IM funding. It would seem reasonable to consider bridge rehabilitation and replacement on the Interstate to be just as maintenance-oriented as are the eligible activities for Interstate Maintenance (IM) funds, yet an Interstate Bridge being funded with HBP funds requires a 20% match while the added capacity for the same bridge could be funded with IM revenue at a 10% match.		The law establishes eligible activities under the HBP. Not all activities are linked to NBI data. Systematic preventive maintenance is allowed for bridges that are not already distressed. No regulation change is needed. The minimum off-system percentage (15%) is established in statute. A regulation change would not address this concern. The funding share is established in statute, not regulation. The law already allows 90% federal participation for HBP projects on the Interstate. No regulation change is needed.
"Buy America" Regulations	FHWA	Regulations around the "Buy America" result in undue hardship and unnecessary paperwork, bureaucracy and materials tracking. Current interpretations allow zero tolerance or leeway, resulting in onerous situations where a small mistake on minor quantities of steel removes all federal funding.	AASHTO	FHWA must comply with Buy America statutory requirements. No regulatory action is planned.
23 CFR Part 661	FHWA	To provide input and recommendations to the BIA and FHWA in the development of IRR Program policies	Indian Reservation	We agree that these are important activities, and we will continue to utilize the IRRPCC and other

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		and procedures; and To supplement government to government consultation by coordinating with and obtaining input from tribes, BIA and FHWA.	Roads Program Coordinating Committee (IRRPCC)	venues for tribal consultation.
NEPA Process	FHWA	Supports greater streamlining of environmental review process, including reducing document reviews by FHWA , accepting electronic submission of documents, and simplify categorical exclusion approvals	National Society of Professional Engineers	As part of the FHWA's Every Day Counts Initiative, the agency has developed a toolkit that contains specific initiatives to shorten project delivery time. The recommendation requires more details for more specific consideration.
23 CFR 771.117(c)	FHWA	Clarify usage of the categorical exclusion for generally small, low-impact Safe Routes to Schools (SRTS) projects to make clear that environmental studies/documentation are not required	Safe Routes to School National Partnership	FHWA's regulations already allow for these types of projects to be processed under NEPA as categorical exclusions.
Safe Routes to School	FHWA	Examine other programs/agencies with more efficient project delivery to identify & adopt best practices, e.g., HUD's Community Development Block Grant program has less paperwork and quicker construction. Time and effort to comply with regulations for SRTS is high given the small size and scope of the typical SRTS award (approximately $150k) resulting in lagging obligations rates. Issue new guidance for the SRTS program to clarify to state DOTS what is encouraged to expedite projects and identify areas for improvement in state DOT practice, including time between award and notice to proceed; contractors and engineers on retainer to implement infrastructure projects with accountability for deadlines; adequate staffing; develop a checklist of the project implementation process; differentiate between infrastructure & non-infrastructure awards for application & compliance processes; and bundle SRTS as one line in state/regional TIPs - SRTS projects often don't have regional significance so should not have to be listed individually I the plans	Safe Routes to School National Partnership	Statutory requirements require SRTS to follow Title 23 requirements. The SRTS guidance already offers Project Streamlining, including grouping projects in the STIP. AASHTO is developing a noteworthy practices guide on SRTS that addresses expediting projects. This Guide will be available in May 2011 and will be provided to each DOT. Plans are underway to market the document after May and through FY 12.
	FHWA	Streamline/remove cumbersome federal environmental and consultant selection process requirements for small locally sponsored projects that typically have minimal environmental consequences, such as a locally	Community Member	FHWA's regulations already allow for these types of projects to be processed under NEPA as categorical exclusions. A change in the consultant selection process would require

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		sponsored sidewalk project (program examples: Transportation Enhancements & SRTS)		revisions to 23 U.S.C. 112 and 113.
"Work Type" proposals	FHWA	Rate work type projects competitively with corresponding expected accident rates for each separate work type category. When accidents are considered as part of the selection and the SI is rated for all work types, then all proposals would be rated relative to their potential for safety improvements	Community Member	This comment appears to refer to an old funding program, the Hazard Elimination Safety (HES) Program and how a particular State implemented the program. That program was replaced with the Highway Safety Improvement Program (HSIP). Therefore, specific response to this comment is not required.
Safety Index Calculation	FHWA	Revise the safety index calculation to show reasonable accident costs and the expected accident rates for the various improvements. Property damage only accidents are hardly ever tracked so are nearly irrelevant. Injury accidents can be minor or severe and a differentiation between them must be made. The accident reduction needs to be defined as that which would bring it to the average expected accident rate.	Community Member	This comment appears to refer to an old funding program, the Hazard Elimination Safety (HES) Program and how a particular State implemented the program. That program was replaced with the Highway Safety Improvement Program (HSIP). A Safety Index calculation is not required as part of the HSIP. Therefore, specific response to this comment is not required.
Definition for minimum qualifications	FHWA	With no definition of what the minimum requirement for project selection might be, Agencies and Districts waste far too much time on totally unrealistic applications. A minimum qualifier would reduce the workload for all. With the [SI/Cost Benefit] calculation revised, a comprehensive ranking will provide the 'best-bang-for-the-buck' index for all proposals. At the start of each cycle, an estimated minimum score should be listed, with a slightly low number to start, (200?). Funds are then distributed from the top until exhausted with any remaining proposals left as alternates in case some top ones were dropped before the funds became available. In subsequent years, it is reasonable that only proposals with SIs above that previous cutoff number are highly likely to be funded while any below that number would again be left as alternates. The cutoff number will change slightly each year but it would let agencies know in advance what proposals might be competitive and also what score is so low that it need not even be submitted. I'd even let them know that an SI of less than half the previous year's minimum would not even be accepted.	Community Member	This comment appears to refer to an old funding program, the Hazard Elimination Safety (HES) Program and how a particular State implemented the program. That program was replaced with the Highway Safety Improvement Program (HSIP). FHWA regulations allow States to determine how funds will be allocated within the State. Therefore, specific response to this comment is not required.
Low $ limits and	FHWA	HES funds should be distributed without respect to	Community	This comment appears to refer to an old funding

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selection for other than safety		district share as agencies and districts compete to get the best projects funded by these 'extra funds.' Holding the project-funding limit to an artificially low limit to fund a greater number of projects lets trivial projects grab some of the funds that could do more good in other places. Awarding funds to an ineffective project to balance funds by District can deny funds to a worthy project in another District. Guidelines for other programs allow for a single project to receive up to 25% of the annual funds in the program. While that is bit high, if a high-cost project does prove to be competitive with a great potential for SAFETY improvement, it may very well be the best use of funds.	Member	program, the Hazard Elimination Safety (HES) Program and how a particular State implemented the program. That program was replaced with the Highway Safety Improvement Program (HSIP). FHWA regulations allow States to determine how funds will be allocated within the State. Therefore, specific response to this comment is not required.
Revising low estimates upward	FHWA	“Low-Ball” estimated projects are frequently submitted and selected as being cost effective, only to return later in the process requesting additional funding to complete the project or a reduction in project scope to stay within the estimated cost. That process rewards poor estimates and encourages abuse. The Grade Separation program requires that all funded proposals must be completed, as submitted, with all increased costs borne by the Local Agency. On completion, the final revised cost is again used to recalculate the project’s Safety Index. If, and only if, the revised cost would still show an SI that is above the cutoff for funding in the year it was funded, the project would get the additional funds. If the revised cost generates a below the cutoff limit SI, it never should have been honestly funded in the first place. Simply stated – small reasonable adjustments to good projects would be allowed while a major increase to an inferior project would not.	Community Member	This comment appears to refer to an old funding program, the Hazard Elimination Safety (HES) Program and how a particular State implemented the program. That program was replaced with the Highway Safety Improvement Program (HSIP). FHWA regulations allow States to determine how funds will be allocated within the State. Therefore, specific response to this comment is not required.
Project delivery	FHWA	Awarding a new project to any Agency that is behind schedule with an existing project is poor stewardship for other worthy projects. Timely use of funds and the competency of Agencies to deliver projects is a reasonable factor for determining which new proposals are selected. Major emphasis must be given to eliminating new proposals from any Agency that is currently behind schedule with an HES project until such time that the project is back on	Community Member	This comment appears to refer to an old funding program, the Hazard Elimination Safety (HES) Program and how a particular State implemented the program. That program was replaced with the Highway Safety Improvement Program (HSIP). FHWA regulations allow States to determine how funds will be allocated within the State. Therefore, specific response to this comment is not required.

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		schedule as proposed.		
Role of the financial plan	FHWA	Revisit the role the financial plan plays in the project development & federal funding process. States should be permitted to build toward a project development incrementally and sequentially within available resources and the financial plan should be able to be approved even though funding for the entire project is not available.	Illinois DOT	By statute, "the STIP (program) can only contain a project or an identified phase of a project, only if full funding can be reasonably be anticipated to be available for the project within the time period contemplated for completion of the project". (SAFETEA-LU § 6001, 23 USC 135 (g)(4)(E)).
CWA compliance	FHWA	Consolidate Clean Water Act compliance efforts under the EPA to eliminate duplicity of effort and reduce the amount of coordination necessary to complete critical infrastructure improvements. Use the considerable body of knowledge accumulated regarding effective wetland mitigation to develop better policies and procedures for implementation of Section 404 (33 USC 1344) which rewards efforts to achieve survivability by wetland banking	Illinois DOT	Section 404 permits fall under the Corps of Engineers and EPA. The national policy for Federal Agencies is to protect and enhance wetlands. FHWA supports the tools and processes available to streamline the environmental process and merge them with NEPA.
23 CFR part 450, statewide planning and metropolitan transportation planning	FHWA	Statewide planning and metropolitan transportation planning require work programs, records retention, and significant reporting that would allow USDOT to pinpoint the costs and benefits associated with compliance with this part. Many of the statements in this part can and should be conveyed in non-binding guidance. The regulations should be clear & concise about requirements and exceptions to those requirements. USDOT should assess whether some of the matters in this section could be better handled by states without these regulations	Caltrans	Records retention requirements are consistent with the Common Rule that applies to Federal grant recipients. The requirements are critical to determining proper use of Federal funds and are appropriately required through regulations. Examples of regulations are in Title 49 CFR 18.42 and Title 49 CFR 18.20, which require accurate, current, and complete disclosure of the financial results of financially assisted activities made with grants or sub-grants awarded with DOT funding.
23 CFR part 450, TIP/STIP	FHWA	Streamline the TIP Amendment process. Current regulations require that many relatively minor changes to project cost, scope, or schedule require time-consuming and paperwork intensive amendments to the TIP. This can occur as a result of relatively minor changes to project limits (as little as over a tenth of a mile), or changes in project cost (regardless of the amount of change). Relaxing the requirements for amendments will greatly expedite revisions and save resources. Change the period of the TIP/STIP from four years to	Caltrans	The current regulation provides flexibility to States/MPOs to set criteria for determining whether changes to cost or schedule for projects should be effected as "administrative modifications". Changes to project design concept and scope, however, require an amendment because of their implications for conformity, public involvement, and fiscal constraint. The period covered by the STIP/TIP was

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		five. Current regulation requires the TIP/STIP to cover four years and be updated at least every four years (California updates every two years, to have a pool of programmed projects to draw on). If the period of the TIP/STIP were increased to five years, with an update at least every four years, it would cut in half the workload of Metropolitan Planning Organizations and states for updates.		established in statute and cannot be changed in regulation without a change in statute. The regulations do set forward criteria to distinguish between an administrative amendment versus an amendment. States and MPOs are encouraged to work with their FHWA and FTA field Offices to establish criteria for determining an administrative amendment consistent with the definitions in the planning regulations. Changes in project design concept and scope such as changes in project length are treated as amendments because they may have other implications such as air quality conformity and require an analysis, public comment, and review. The TIP/STIP update cycle is set by Statute at 4-years. A change to a 5-year update cycle would require a change in Statute
23 CFR part 635	FHWA	Broaden and extend the option to use warranties in highway construction contracts. Currently, federal regulations allow for warranties to cover specific products or features of a construction project (such as the pavement), but are not allowed to cover an entire project. Recently, as part of changes made to federal regulations to accommodate design-build contracting, the warranties section of the CFR was amended to allow “general project” warranties on design-build projects on the NHS, which covers all parts of a construction project. In addition, projects developed under a public-private agreement may include warranties that are appropriate for the term of the contract or agreement, which could be many years. These allowances have not been made for traditional design-bid-build projects, which are still restricted, as noted above, to specific products or features. While general project warranties will likely not be used	Caltrans	The statutory prohibition on participation in routine maintenance may conflict with a provision to maintain an entire project for an extended time period. Based on the industry’s opposition to such clauses in the 1995-1996 rule making period, substantial opposition to long term workmanship and material warranties still exists and most likely would increase a contractor’s risk and bid prices.

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		on all traditional design-bid-build projects, their use could encourage innovation in construction processes or the products that are used since the potential for failure would be covered by the warranty. Finally, even the general project warranties allowed for design-build projects are permitted only for short periods of time, or as the regulations state, "generally one or two years." Unfortunately, one to two years is not typically long enough to determine if a roadway or bridge structure has been built correctly. A more appropriate minimum length of time for a warranty would be in the range of 5-10 years.		
23 CFR 635.117(b), 23 CFR 636.107 & 49 CFR 18.36(c)(2)/ Local hiring	FHWA	Rescind FHWA regulations at 23 CFR 635.117(b), 23 CFR 636.107 & 49 CFR 18.36(c)(2), because they unnecessarily prohibit application of local geographic preferences to construction of highway and bridge projects under the Federal-aid highway program	Building & Construction Trades Department, AFL-CIO	Local geographic hiring and contracting preferences are in conflict with the statutory requirement "The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition." (23 USC 112)
Categorical exclusion	FHWA	Use of CEs should be expanded, best practice is to establish dollar thresholds for review. Provided 2 page template 'checklist for federal projects within existing ROW' - intended to be the only documentation required to be submitted by a state and/or local government for FHWA to authorize identified project types.	American Public Works Association (APWA)	These comments involve suggestions for the promotion of best practices, etc. No regulatory action is planned.
NEPA	FHWA	Rules be changed to simplify the NEPA and applicable federal regulations to provide clear guidance, make the process outcome based, provide a national clearinghouse submittal of NEPA documents, streamline the process, allow greater opportunity for and more definite guidance on qualifying projects as programmatic CEs, reduce documentation requirements, allow for greater, less burdensome delegation of FHWA environmental authority to states, and increase authority for states & USDOT to use programmatic approaches for environmental compliance	APWA	No specific change is proposed for consideration other than a national clearinghouse for the submittal of NEPA documents. All Environmental Impact Statements must be submitted to the U.S. EPA who is required to publish weekly Notices of Availability for all of them in the Federal Register. In addition, a number of states have established clearinghouses under Presidential Executive Order 12372, "Intergovernmental Review of Federal Programs" to coordinate the review of proposed Federal financial assistance which includes NEPA documents.
Programmatic agreements	FHWA	Develop programmatic agreements for activities that are primarily maintenance or safety activities	APWA	The FHWA's Every Day Counts initiative includes Programmatic Approaches. CEQ and FHWA authorities and processes are in place to advance PAs for these activities. Other regulatory

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				agencies also have examples of developing streamlined reviews for common low impact projects.
Applicability of federal laws & rules to partially federally funded transportation projects	FHWA	Allow state/local projects that receive less than $5 million or 25% of total project funding from federal sources to be exempt from federal laws/regulations, provided such projects follow all applicable state & local laws/regulations Provide clear direction of when a project becomes 'federalized' and subject to federal laws and regulations	APWA	This suggestion would require Federal legislation to change the current provisions in law (23 U.S.C. 112 (b)) which currently require a competitive negotiation process to be followed when procuring engineering and design related services using Federal-aid Highway Program funding on projects directly related to a construction project. Small purchase procedures (as specified in 23 CFR 172.5(e)) exist for engineering and design related services contracts with a total cost below the lesser of the Federal simplified acquisition threshold (currently established at $150,000) or the State's established threshold. Whether a project becomes "federalized" is a fact-based decision that generally focuses on the degree of Federal involvement and control in the project. This makes it challenging to establish a universally accepted standard, as suggested. No regulatory action necessary.
23 CFR Part 450, planning & research program administration	FHWA	Instead of requiring FHWA approval of planning programs and documents, enable states to self-certify that planning documents and programs are compliant with title 23	Maine DOT	FHWA and FTA do not approve public involvement plans, long-range transportation plans, or transportation improvement programs (TIP) of MPOs. FHWA and FTA do approve the STIP and conformity findings on TIPs and Metropolitan Transportation Plans because it is required by statute. Any change to this requires a change to statute. States and MPOs currently have a requirement to self-certify that their planning programs and documents are compliant with Title 23. FHWA and FTA continue to examine their internal management practices and look for opportunities to achieve better consistency through providing guidance and training.
Audited overhead	FHWA	FHWA interpretation is that Audited Overhead report is	Maine DOT	This suggestion would require Federal legislation

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report		required for commercial rate contracts over $100k. Because the rates are calculated for reasonableness by a review of the market, report adds no value and creates additional expense for the consultant. Recommends eliminating the need for an Audited Overhead Report for any commercial rate contract greater than $100k.		to change the current provisions in law (23 U.S.C. 112 (b) (2) (B and C)) which currently requires an indirect cost rate to be developed in accordance with the cost principles contained in the Federal Acquisition Regulations (48 CFR 31) on any contract or subcontract awarded for engineering and design related services using Federal-aid Highway Program funding on projects directly related to a construction project.
23 CFR 172.7(b) Audits	FHWA	Allow contracting agencies to initiate negotiations with consultants regarding their indirect cost rates by modifying the regulation as follows: Replace the following: "*A lower indirect cost rate may be used if submitted by the consultant firm; however the consultant's offer of a lower indirect cost rate shall not be a condition of contract award.*" With: *"A lower indirect cost rate may be negotiated. Agreement by the parties to a lower indirect cost rate shall not be a condition of award."*	Maine DOT	No changes are needed or action required. Revisions to regulations are not required to address this comment. This suggestion would require Federal legislation to change the current provisions in law (23 U.S.C. 112 (b) (2) (B and C)) which requires an indirect cost rate to be developed in accordance with the cost principles contained in the Federal Acquisition Regulations (48 CFR 31) on any contract or subcontract awarded for engineering and design related services using Federal-aid Highway Program funding on projects directly related to a construction project. A contractor may offer a rate lower than established in their indirect cost rate audit, however the agency cannot require a lower rate, a condition of award or in negotiating the contract.
23 CFR Part 450, Appendix A	FHWA	Use planning process decisions as a starting point for NEPA review. FHWA should establish a presumption that decisions made in the planning process on corridor, facility type, and mode will be adopted in the NEPA process, in order to avoid the tendency for decisions made in the planning process to be re-opened in the NEPA process.	AASHTO	This recommendation can substantially be implemented administratively. Currently, Appendix A of the planning regulation provides guidance on the use of planning information to inform the NEPA process. Appendix A is non-binding and at the discretion of the parties responsible for NEPA review as to the extent and appropriateness of previous planning information that is used to inform NEPA versus the development of new information in NEPA. 23 CFR 771.111(a)(2) states that the information and results provided by, or in support of, the transportation planning process may be incorporated into environmental review documents in accordance with 40 CFR 1502.21

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				and 23 CFR 450.212 or 450.318.
23 CFR 771	FHWA	Promote programmatic solutions to streamline project delivery by the following: Include clear regulatory language indicating that programmatic approaches are the standard way of conducting business. Provide maximum flexibility in the development of programmatic categorical exclusions. Expand funding and support for "in-lieu" fees for conservation banking and programmatic mitigation for natural and cultural resource impacts. Allow the states, through programmatic agreements, to conduct legal sufficiency reviews.	AASHTO	Efforts are underway within FHWA's Every Day Counts initiative, NCHRP, and pending program work which can be accomplished under existing authority and eligibilities. *Current regulation makes this an FHWA/FTA determination and the only clear authority for delegating the decision is under 23 USC 327.*
23 CFR 450/ revenue and cost documentation	FHWA	23 CFR Part 450 requires revenues and costs in MPO long range transportation plans (LRTP), MPO transportation improvement programs (TIP) and the statewide transportation improvement program (STIP be expressed in "year of expenditure dollars." No such requirement is contained in Title 23 USC. Recommendations: The use of either "year of expenditure dollars" or "present day dollars" for both revenues and costs is technically correct and both approaches are widely used in financial analyses. The preferred approach should be a technical decision best made by the MPO in cooperation with the state.	AASHTO	The year of expenditure (YOE) requirement in the regulation requires State DOT's and MPOs to adjust project costs and revenues to year of expenditure. This is important for the demonstration of fiscal constraint because over the life of the STIP/TIP and MTP, revenues may not be inflating at the same rate as project costs. Also, using YOE dollars provides consistency between project costs in the STIP/TIP and those used in project finance plans. States and MPOs do have the option of developing an analysis using "present day dollars" in addition to an analysis using YOE dollars for their own use and purposes if they deem it necessary.
23 CFR part 450 subpart C - signing of ROD or FONSI and TIP/STIP	FHWA	The regulations require that "all regionally significant projects requiring an action by FHWA or FTA" be included in the TIP/STIP. The regulations also state that " the STIP shall include for project or phase (e.g. environmental/NEPA…)" descriptive material, cost, etc.. Since one of the phases is environmental /NEPA the culmination of that phase with a ROD or FONSI signature should be done if the cost for that phase was included in the STIP. A memo written by FHWA states	AASHTO	The basis for requiring a subsequent phase of a project in a STIP/TIP prior to final NEPA approval is that in order for FHWA to make a decision under NEPA, there must be a proposed action that requires FHWA approval. Clarification of existing guidance has recently been issued on this topic at: http://www.fhwa.dot.gov/planning/tprandnepasupplement.htm. No further regulatory action is

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		that a ROD or FONSI cannot be signed unless the next phase of the project is listed in the TIP/STIP with funds identified in addition to being listed in the fiscally constrained plan. This seems to require that at least 2 phases be included in the TIP/STIP. This is an interpretation of the regulations that has created hardship for DOT's trying to advance projects with very constrained funding streams where the project may have to be implemented in phases over a long period of time. Recommendations: Provide new guidance on the interpretation of signing of ROD or FONSI without having additional project phases included in the TIP/STIP.		planned.
23 CFR part 450, subparts B & C, integrating long range plans	FHWA	The regulations require that many areas be addressed in the Statewide long range plan including safety, transit, rail, security, aviation, freight, and bike/ped. Varying guidelines from FHWA, FTA and FRA set the framework for these separate documents resulting in a fragmented approach that creates silos instead of integration. Recommendation: The regulations could be re-structured to reflect a "one DOT" and a more comprehensive approach to transportation planning.	AASHTO	The framework for these documents is based on current statute and current regulations are consistent with the statute.
23 CFR 650.311, bridge inspection frequency	FHWA	Within 23 CFR 650.311, bridge inspection frequencies are mandated at fixed maximum intervals that are independent of detail types on the bridge, traffic volumes, magnitude of service stresses, age of the structure, and frequency of the loading cycles on the bridge. Newer bridges with improved details and materials that carry low truck traffic volumes should not have the same inspection requirements as older, more heavily traveled bridges. Since damage occurs more rapidly in older structures due to the accumulation of damage with service, the optimum inspection schedule would be more infrequent in the early life of the structure and more frequent in its later years. The engineering community has the ability to develop inspection frequencies that take into account the rate of damage accumulation to provide a defined reliability.	AASHTO	FHWA is participating in an NCHRP project to explore development of a methodology to apply a risk/reliability approach to establishing inspection frequencies. FHWA believes a more rational approach to setting inspection frequencies would enable bridge owners to focus resources on bridges most in need of attention. No further regulatory action is planned at this time.

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		A provision that treats all bridges the same, with respect to inspection frequencies, requires states to expend a large amount of resources without significantly improving the safety and reliability of the structures. This diverts funds and resources from those bridges that need additional monitoring to those that have an inherently lower risk of failure through being either lightly traveled or still early in their design lives. A process that utilizes a risk based solution similar to other industries for determining inspection frequencies would allow states to properly focus and apply limited resources to the bridges where the need is greatest. Recommendation: Revise 23 CFR, Part 650, Section 650.311 to allow the bridge inspection frequencies to be determined using a risk/reliability based method.		
Emergency repair work in northern states	FHWA	The 180 day timeframe for 100% federal reimbursement for disaster repair work is not appropriate in northern states as a result of the weather-shortened construction season. Northern states are losing federal funds due to the fact that they are in the north and construction cannot take place in the winter. Recommendation: Allow seasonal discretion for start dates for the 180 day period in which emergency relief funding is reimbursable with 100% federal funds in northern states.	AASHTO	This suggestion would require a statutory change. No regulatory action is planned.
Delegation of project oversight to state DOTs	FHWA	Need to more clearly define the role of Federal & State partners in the project delivery process to reduce redundancies & inefficiencies within the project oversight process. The current structure of review appears to be a hold-over from the 1960s and 1970s, when FHWA provided engineering expertise and guidance to the States. FHWA is now a much leaner agency, and attempts to continue the detailed federal oversight slows the project delivery process.	AASHTO	FHWA's approach to project oversight has undergone significant changes since the passage of ISTEA in 1991. Our stewardship and oversight role has evolved based of changes in surface transportation laws, recommendations resulting from OIG and GAO reviews, and FHWA's own efforts to improve its stewardship and oversight of the Federal-aid program. The stewardship and oversight guidance, last revised in 2003, is now in the process of being updated. No regulatory action planned.

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		States hire licensed professional engineers, but multiple levels of review remove accountability. Holding consultants accountable and reducing redundant oversight will help move transportation agencies toward performance based design & engineering, the natural evolution from the current "prescriptive" method of design. Recommendation: Modify FHWA's project review process to be more process-oriented rather than project specific, thus delegating the primary role of project oversight to State DOTs.		
23 CFR 637B, Quality Assurance for P3 projects	FHWA	23 CFR 637B, "Quality Assurance Procedures for Construction ", and associated TA 6120.3 "Use of Contractor Test Results in the Acceptance Decision, Recommended Quality Measures, and the Identification of Contractor/Department Risks" do a good job of assuring that the public's interests are protected when a transportation project is delivered using the Design-Bid-Build or Design-Build processes that do not include a long-term maintenance agreement (50 yrs). However, for a Concession or a Public-Private-Partnership (P3) contract that requires a 50-year maintenance agreement, these federal requirements insert the owner into the Concessionaire's daily operations and may increase their risks of being able to enforce the performance standards of the 50-year maintenance agreement. Recommendation: Eliminate the requirement for the Owner to perform Owner Validation on all materials testing if a long-term maintenance agreement (50 yrs) is part of the contract and an Independent Engineer (IE) utilizes standard audit process oversight to confirm that the Concessionaire follows their approved quality processes.	AASHTO	23 CFR 637.207 (b) states that "In the case of a design-build project funded under title 23, U.S. Code, the STD's quality assurance program should consider the specific contractual needs of the design-build project" and that the quality assurance program may rely on a combination of contractual provisions and acceptance methods so that adequate verification of the design-builder's quality control sampling and testing is performed to ensure that the design-builder is providing the quality of materials and construction required by the contract documents. The current regulation does allow for reduced verification sampling and testing for validation, however, some level of validation is still required to protect the owner from the risk of the costs resulting from major project failure during the agreement period. Q&A on quality assurance can be found on the FHWA website at: http://www.fhwa.dot.gov/pavement/materials/qanda637.cfm
SRTS	FHWA	Title 23 regulations are primarily targeted toward large scale, complex, federally funded highway projects & time and effort needed to comply is large compared with the	Robert Wood Johnson Foundation	Some statutory changes would be necessary to achieve the goals of this comment. The SRTS guidance already offers Project Streamlining

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		small award (average size of the award is $150k) resulting in lower obligation rates Recommendations: 1. Clarify usage of the “categorical exclusion” for the National Environmental Policy Act (NEPA) [23 CFR 771.117(c)]. Under current regulations, bicycle and pedestrian lanes, paths, and facilities are listed as not requiring additional National Environmental Policy Act documentation or Federal Highway Administration approval. However, for SRTS projects, some states are requiring environmental studies and most are requiring project sponsors to fill out multi-page forms requiring sign-offs from numerous agencies to document that the project qualifies for the categorical exclusion. SRTS projects are generally small, low-cost, and within an existing built environment and therefore should not require documentation to qualify for the categorical exclusion unless special circumstances exist. If the categorical exclusion could be clarified, it would help simplify the process of environmental approvals. 2. Examine other programs or agencies with more efficient project delivery to identify and adopt best practices and rules changes. For example, the Community Development Block Grant program through the Department of Housing and Urban Development provides funding for installation of sidewalks and other community development projects. Local experiences with this program involved less paperwork and quicker construction than is possible through the SRTS program. 3. Issue new guidance for the federal SRTS program that clarifies for state Departments of Transportation (state DOTs) what is permissible and encouraged to expedite projects. It would also be helpful for the FHWA to follow up with state DOTs to review their practices and identify areas for improvement. Some measures that could be recommended include: • Monitor the amount of time it takes to get from award to notice to proceed and identify steps in the process		recommendations. Rather than issue new guidance, the FHWA can provide additional information to Divisions specifically related to categorical exclusions and grouping projects in the STIP. AASHTO is developing a noteworthy practices guide on SRTS that addresses expediting projects. This Guide will be available in May 2011 and will be provided to each DOT. Plans are underway to market the document after May and through FY 12.

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		that can be improved by the state. • Hire contractors at the state level on retainer to implement infrastructure projects and hold them accountable for completing projects within a reasonable timeframe. These contractors can expedite construction by handling Title 23 compliance for multiple projects at once and are more familiar with the process than local communities with less experience with federal transportation rules. • Hire engineering firms on retainer to provide “on-call” engineering services and regulatory assistance for project recipients unfamiliar with the regulatory and approval process. • Ensure adequate staffing within the state DOTs contracting department to handle the administrative workload for the dozens of project recipients and to allow for responsiveness to local inquiries. • Develop a checklist for recipients of the various steps in the implementation process, including forms needed, timelines, and contact persons while keeping in mind that many project recipients may be unfamiliar with the federal transportation rules and process. • Have separate application and compliance forms for non-infrastructure and infrastructure awards so that non-infrastructure projects are not delayed while the additional forms and permissions are completed for construction projects. • Bundle SRTS projects as one line in the state and regional Transportation Improvement Plans (TIP) so that individual project sponsors do not have to apply for amendments to the Statewide Transportation Improvement Program/TIP. Small-scope SRTS projects should not be considered “regionally significant” and therefore do not have to be listed individually.		
Environmental Delegation	FHWA	Expand and make permanent the SAFETEA-LU delegation pilot.	General Contractors Assn of NY	This proposal would require statutory changes.

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23 CFR 774, 4(f)	FHWA	Length of comment period for DOT/HUD/Dept of Agriculture review of 4(f) (45 days + 15 additional days) is too long. The 45-day (plus 15) comment period does not seem reasonable when reviews by the Division office and for legal sufficiency are typically limited to 30 days (in Colorado). Also, even when DOI comments are provided in a timely manner, the agency still has to plan for the 60-day review in the schedule. In addition, experience with several recent full Section 4(f) evaluations reveals that the DOI review rarely results in substantive comments that require changes to the Section 4(f) document. And finally, understanding that coordination with DOI/HUD/Dept of Agriculture is part of the statute, it's not always clear from a resource perspective why these agencies are involved in the review process. If DOI/HUD, Dept of Agriculture have jurisdiction over, or interest in the Section 4(f) resources, then it makes sense to include them in the evaluation process. But when there is no jurisdictional or other reason for interest in the resource, it seems like a waste of everyone's time to include their review in the overall process. Recommendations for Modification, Elimination: • Re-examine the comment period for DOI/HUD/Dept of Agriculture to eliminate the additional 15-day time frame from the comment period OR decrease the time frame to a more reasonable 30 days to align more closely with typical time frames for internal reviews • Determine if DOI/HUD/Dept of Agriculture review is necessary by establishing whether DOI/HUD/Dept of Agriculture have jurisdiction or another interest in the Section 4(f) resource. Based on interest in Section 4(f) resource, provide DOI/HUD/Dept of Agriculture the opportunity to decline the review	Colorado DOT	23 CFR 774 regulations require HUD and/or Agriculture review only when appropriate. Given DOI's expertise in all Section 4(f) resources, they are provided an opportunity to comment on all individual Section 4(f) evaluations. After coordination with DOI on the update to the Section 4(f) regulations in 2008, the time period for their comment was limited to 60 days before it was assumed there was a lack of objection. No regulatory action planned.
23 CFR part 450	FHWA	Planning regulations for MPO's and for Statewide planning – (23 CFR part 450, subparts B and C) – the planning regulations for mpo's are distinct and different	Colorado DOT	With enactment of new Surface Transportation Program Authorization expected in the relatively near future, it is very likely that a new rulemaking

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		than those for statewide planning yet the expected end product is a consolidated transportation plan that covers the whole state. The disparate requirements and timelines create confusion and difficulties in delivering for the public an understandable vision and implementation plan for transportation in the State. It is possible to have mis-matched or even conflicting goals and priorities even though there is a regulation calling for cooperative and collaborative planning to occur.		process will be undertaken to reflect new statutory requirements and authorities, replacing the current rule. This will certainly include attention to the alignment of metropolitan and statewide transportation planning, which can be fully vetted with all stakeholders and the public during that process. No regulatory action planned.
23 CFR part 450	FHWA	(23 CFR part 450, subpart C) - The requirement for projects to be listed in the long range plan for MPO areas, particularly those in non-attainment for the clean air act, creates a "pipeline" of projects with strong political expectations for over a 20 year horizon. Changing emphasis areas or funding types or policy priorities are not easily addressed due to the resistance to deviate from that list once it is established.	Colorado DOT	The requirement for Statewide and Metropolitan Transportation plans to cover a 20-year horizon is required by statute. Any changes to regulations would require a change in statute. However, the State DOT's and the MPO's have the option of amending their plans at any time.
23 CFR part 450	FHWA	(23 CFR part 450 subpart C) – Signing of ROD or FONSI and TIP/STIP – the regulations require that "all regionally significant projects requiring an action by FHWA or FTA" be included in the TIP/STIP. The regulations also state that " the STIP shall include for project or phase (e.g. environmental/NEPA…)" descriptive material, cost, etc.. Since one of the phases is environmental /NEPA the culmination of that phase with a ROD or FONSI signature should be done if the cost for that phase was included in the STIP. A memo written by FHWA states that a ROD of FONSI cannot be signed unless the next phase of the project is listed in the TIP/STIP with funds identified in addition to being listed in the fiscally constrained plan. This seems to require that at least 2 phases be included in the TIP/STIP. This is an interpretation of the regulations that has created hardship for DOT's trying to advance projects with very constrained funding streams where the project may have to be implemented in phases over a long period of time.	Colorado DOT	The basis for requiring a subsequent phase of a project in a STIP/TIP prior to final NEPA approval is that in order for FHWA to make a decision under NEPA, there must be a proposed action that requires FHWA approval.
23 CFR part 450	FHWA	Integrating Long Range Plans (23 CFR part 450 subparts B and C) – the regulations require that many areas be addressed in the Statewide long range plan	Colorado DOT	The framework for these documents is based on current statute and the regulations are consistent with the statute. No regulatory action planned.

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		including safety, transit, rail, security, aviation, freight, and bike/ped. Varying guidelines from FHWA, FTA and FRA set the framework for these separate documents resulting in a fragmented approach that creates silos instead of integration. The regulations could be re-structured to reflect a "one DOT" and a more comprehensive approach to transportation planning		
23 CFR 635.118, 29 CFR 3, 5; Davis Bacon	FHWA	Payment of Davis Bacon wages on Local Agency administered Temporary Enhancement and SRTS projects adds to the cost of the project as this takes administrative time and training. Enhancement funded projects and SRTS greater than $2000.00 but can be linked to a roadway on the federal-aid system as stated in the FHWA Memo 2008 are required to pay prevailing Davis Bacon wage rates. This is an impact to smaller communities in construction costs thus requiring higher local match as well as higher costs for contract administration to check payrolls and conduct labor compliance interviews. Recommendation: Propose that Davis Bacon wages for TE funded and SRTS projects be exempted and be treated similar to federal funded projects where the work is done by Local Agency forces. Davis Bacon wages for these smaller funded projects in local communities add costs to Contractors who don't normally pay Davis Bacon wages and add costs for Local Agencies to perform payroll checks and conduct labor compliance interviews. Funding would go further for project if Davis Bacon wages not a requirement	Colorado DOT	Statutory provisions require FHWA to apply Davis-Bacon requirements to projects on Federal-aid highways. (23 USC 113).
23 CFR 470.105, Street & Highway Functional Classification	FHWA	The guidelines currently in use have not substantially been reviewed or revised in over 40 years. HPMS Field Manual has been recently revised and new implementation is beginning. Functional classification is related and should also be reviewed. Urban Area boundaries might have more utility for transportation planning as an "urbanness" index assigned to US Census geography, or to features inside the US Census features.	Missouri DOT	FHWA will consider the appropriateness of updating the functional classification system and the functional classification manual at the time of reauthorization. No regulatory action planned at this time.

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		Since 1991, Functional classification has been used in some cases solely as a funding tool, and objective trip length data for classification is difficult to obtain and measure. The Functional classification system needs to be more robust to accommodate more classes to provide better utility at the local and regional levels to perform sound planning. Normalization of classes and better objective criteria would help unify data used by RITA and by the Bureau of Transportation Statistics.		
23 CFR 450.216(a), STIP	FHWA	Due to the importance of keeping programming information up-to-date, it is recommended that the update period for the STIP be at least every two years, or more frequently if the Governor elects a more frequent update schedule. Updating the STIP every two years maintains a programming document that always shows planned obligations at least two years into the future. This is preferable to allowing the programming document to get down to showing only the current year's planned obligations.	Hampton Roads TPO	States and MPOs are required update the STIP/TIP at least once every 4-years. They may update the STIP/TIP more frequently if necessary. Any change to the 4-year minimum STIP/TIP cycle in regulation would require a change in statute. No regulatory action planned.
23 CFR 450.216(b)	FHWA	Recommend adding something to the effect of "the STIP development schedule shall take into account the metropolitan planning organization (MPO) processes for TIP development, including review of the draft TIP project list, public involvement, and meeting schedules of the technical and policy boards." Since the MPO TIPs shall be included without change in the STIP [450.216 [b]], and since there can be repercussions if a MPO TIP is not ready in time to be included in the STIP (450.218 (c)), it is important that the cooperation between the State and the MPOs during STIP development take into account the time necessary to develop the MPO TIP.	Hampton Roads TPO	The current regulation calls for "…the cycle for updating the TIP must be compatible with the STIP development and approval process." This is appropriate because a State may have multiple MPO TIPs that might be on different timeframes, while there is only one STIP. No regulatory action planned.
23 CFR 450.216(l), STIP	FHWA	Since the STIP is required to be fiscally constrained, it is recommended that this statement be revised to read the STIP **shall** include a financial plan (instead of may).	Hampton Roads TPO	This suggestion would require a change in statute. Current statute states that the STIP "may include a financial plan."
23 CFR 450.324(a), TIP	FHWA	Due to the importance of keeping programming information up-to-date, it is recommended that the	Hampton Roads TPO	States and MPOs are required update the STIP/TIP at least once every 4-years. They may

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		update period for the TIP be at least every two years. Updating the TIP every two years maintains a programming document that always shows planned obligations at least two years into the future. This is preferable to allowing the programming document to get down to showing only the current year's planned obligations. (This change would need to be made in concert with a change to 450.216 (a] regarding the update schedule for the STIP.)		update the STIP/TIP more frequently if necessary. Any change to the 4-year minimum STIP/TIP cycle in regulation would require a change in statute.
23 CFR 450.322, metropolitan transportation plan	FHWA	Issue: Burdensome. Frequency of plan updates creates hardship on local governments in terms of staff and financial resources especially when the update process can take 2 years. Review this regulation to consider lengthening the frequency of transportation plan updates to at least 6 years for MFC's in air quality attainment, maintenance, or limited-maintenance areas.	Montana DOT	The metropolitan transportation plan update cycle is set in statute – at least every 4 years in non-attainment and maintenance areas and every 5 years in attainment areas. Any change to the regulations would require a change to the statute.
23 CFR 450.212 transportation planning studies & project development and 450 Appendix A - linking the transportation planning and NEPA process	FHWA	Issue: Maintain flexibility and do not mandate this optional project streamlining process. We are not suggesting this as a CFR to be reviewed. However, if selected based on input from others, do not incorporate Appendix A into the regulation, maintain it as an appendix. This process is useful because it is optional, not mandated, allowing states flexibility to customize the approach to what makes sense given each particular study. In addition, under 23 CFR 450.212, preserve the ability to use products from the planning process in the environmental process to avoid -duplication of efforts and unnecessary, excess costs.	Montana DOT	Appendix A to the planning regulations is non-binding and is guidance, not a requirement. No regulatory action planned.
23 CFR 450.206 & 450.306 Scope of the Transportation Planning Process; 23 CFR 450.214 Development of Long-Range Transportation Plan; 23 CFR	FHWA	Issue: Maintain flexibility and progress made in streamlining. We are not suggesting these CFR's as candidates for review, but if they are selected, we strongly encourage retaining the flexibility and important streamlining provisions already contained in these regulations including: 1. Continue planning factor provision as a "consideration" rather than a "mandate" and do not expand the already comprehensive list of planning factors; 2. continue to allow the option of a policy-based	Montana DOT	No changes are requested with these comments; and there is no movement to change the three listed “streamlining provisions” from their current status.

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450.222 & 450.336 Applicability of NEPA to Statewide & Metropolitan Transportation Plans		statewide long-range transportation plan, rather than project specific; and 3. continue to exempt the planning process from NEPA		
23 CFR Part 645, Utilities	FHWA	Issue: Outdated. These CFR parts address Utility relocations, adjustments and reimbursements, but rely upon manuals that were last updated in 2003. These CFR parts could be updated to incorporate new technologies, procedures and language in effect since 2003.	Montana DOT	No changes are needed or action required to address these comments. The use of evolving technologies and innovative practices to improve the detection, identification, accommodation, and relocation of utilities is allowed now and a decision of the State or a local agency. FHWA's Every Day Counts initiative on "Flexibilities in Utility Accommodation and Relocation" is promoting and developing guidance to support State DOTs and local agencies using innovative practices, technologies and the flexibility which already exists associated with accommodating and relocating utilities in 23 CFR 645.
23 CFR 650.203, erosion & sediment control	FHWA	Issue: Conflicting regulations and undue cost for transportation departments. This regulation is inappropriate for linear facilities and should be reviewed. Recommendations for Modification/Elimination: The ELG should be modified to eliminate linear transportation projects from the construction and development point source category. Instead, construction of linear transportation facilities could more appropriately be handled under its own ELG point source category. Under this scenario, the technology that can be feasibly Implemented, as well at the economic impacts associated with implementation of identified technology, would be analyzed specific to linear transportation projects. This analysis would likely result in a turbidity limit with a greater likelihood of being met, as well as more practicable control and sampling requirements.	Montana DOT	EPA published effluent limitation guidelines on 12/1/2009 to control discharge of pollutants from construction sites. Sediment is one of the leading causes of water quality impairment. The guidelines were developed for construction activities which can significantly impair water quality. FHWA provided comments on the rulemaking and continues to work with EPA to ensure the measures identified in the rulemaking can be implemented with linear transportation projects.
23 CFR 650.113, practicable	FHWA	Issue: Misleading, unclear. Clarify what is required for documentation for determining "only practicable	Montana DOT	The term "practicable alternative" is used as defined and required by Executive Order 11988

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alternative		alternative". This could be done by revising the wording in 23 CFR 650.113 to first discuss what is required for "only practicable alternative finding" then add a second section to 650.113 to discuss what is required to sufficiently document the "only practicable alternative finding" for projects where there is a "significant encroachment. In addition, this CFR is applicable to facilities, but it is not noticeable based on the title of Part 650. There is no reference to facilities in the title and this does and can prevent the reader from understanding this section is applicable. Suggest adding "facilities" to the title,		(May 24, 1977) and DOT Order 5650.2. The proposed changes would alter the requirements of EO 11988. Additionally, the meaning of “practicable alternative” is well understood and defined within floodplain and NEPA frameworks. For example, FHWA Technical Advisory T 6640.8A (October 30, 1987) provides very good discussion and clarification of the floodplain process within NEPA (there are other examples). These provide the clarification recommended in the comments. Finally, adding more prescriptive requirements (such as findings) to the regulation could result in less flexibility for transportation officials. For example, projects with categorical exclusions would need to document the information suggested in the comment, resulting in additional regulatory burden. The regulation uses the term “action” to mean any highway construction, reconstruction, rehabilitation, repair, or improvement undertaken with Federal or Federal-aid highway funds or FHWA approval. This would include “facilities,” so adding the term would be redundant. The White House has instructed Federal Agencies to review and potentially revise EO 11988 (Federal Interagency Floodplain Management Task Force). The USDOT is a member of this task force, with FHWA representing the OST in this effort. The USDOT will strive to recognize and communicate areas of improvement and concern to the transportation community. These comments represent one such potential area.
23 CFR 774 - 4(f)	FHWA	Issue: Redundant, burdensome. Inclusion of historic sites in the Section 4(f) process is redundant to the Section 106 process under 36 CFR Part 800 "Protection of Historic Properties". This is a duplicative process with	Montana DOT	Section 4(f) law includes publicly owned historic properties. A statutory change would be required to effect this change. No regulatory action planned.

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		no value added as historic properties are thoroughly dealt with under Section 106 which occurs early in the project development process. Historic considerations should be removed from the Section 4(f) regulation and appropriately remain under Section 106.		
23 CFR 657-658, Truck size & weight	FHWA	Issue: Burdensome and unclear. The reporting requirements are very cumbersome and unclear compared to the benefits gained from these reports. It is also confusing as to when and where a state can prohibit truck travel based on this CFR.	Montana DOT	All the States are now reporting electronically. We will work through the Montana Division Office and the S&W program office to reach out to the Montana DOT to see if we can clarify the reporting requirements and answer any questions they have on truck travel. No regulatory action planned.
23 CFR 710.601, federal land transfers	FHWA	Issue: Redundant as regards NEPA due to different federal agencies imposing separate environmental document requirements for the same project and therefore generating undue cost and process. A revision to require acceptance by other agencies of already approved and accepted FHWA environmental documents could generate cost and time savings. Recommendations for Modification/Elimination: The CFR could be amended to require federal land-owning agencies to accept the environmental document already approved and accepted by FHWA for the project, and issue its letter of consent without conducting a separate environmental document. This amendment would save state DOTs time and therefore money.	Montana DOT	Each federal agency must comply with its own NEPA procedures when taking a federal action. Both CEQ and FHWA regulations already encourage early coordination and adoption of environmental documents when appropriate. FHWA does not have authority to require another federal agency to accept our NEPA decision. Any change of that nature would be statutory.
23 CFR 750.106 & 23 CFR 750.108 & 23 CFR 154, outdoor advertising	FHWA	Issue: Outdated. This is a policy written for 1970's technology and should be updated to address 21st century technologies. Recommendations for Modification/Elimination: If FHWA has approved electronic billboards, this should be written into the regulations, instead of contained In a Memo which is not readily available to the public or to state regulatory agencies. One of the purposes of this review is to Identity regulations that need revision to address changes in technology, and reconsider regulations that were based on scientific information that has been superseded. These regulations on "moving	Montana DOT	Interpretations of existing long-standing laws and regulations have been necessary, since the statute has not been updated. In the future, new regulations could be developed with a public involvement process, if statutory changes are made. No regulatory action planned.

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		parts" and "flashing and moving lights" were written for 1970s technology, and should be updated to address 21st century technology.		
23 CFR 750 Subpart A, outdoor advertising	FHWA	Issue: outdated and not applicable to all states. This results in confusion with the public. Consider repealing. Recommendations for Modification/ Elimination: Evaluate whether the bonus program is viable or necessary and if not, eliminate the program and repeal 23 CFR Part 750 Subpart A, which addresses standards for the 1958 Bonus Program only, and 23 CFR 750.713 which addresses the existence of the bonus program.	Montana DOT	A statutory change would be required to implement this proposal.
23 CFR 750 Subchapter D, outdoor advertising	FHWA	Issue: conflicting amongst regulation, opinions, and court decisions have occurred regarding use of amortization or cash as just compensation for acquisition of signs Recommendations for Modification/ Elimination: FHWA should clarify current regulations to set forth its position on use of amortization or cash as j u s t compensation for acquisition of signs. State and local laws may unknowingly be out of compliance with the federal position, because of the many conflicts In current federal regulations, opinions and court decisions.	Montana DOT	Federal law is clear on non-applicability of amortization in sign control issues. Statutory changes would be needed to implement this.
23 CFR 771.113, alternative neutral activities	FHWA	Add a provision to allow a state to proceed with alternative neutral activities with approval by FHWA, for example: "(6) A State may proceed with alternative neutral activities with approval by FHWA"	WSACE (IdeaScale)	FHWA has already adequately addressed this issue though its issuance of Order 6640.1A, *FHWA Policy on Permissible Project Activities During the NEPA Process*, in October 2010. No regulatory action necessary.
23 CFR 650.311, inspection frequency	FHWA	Allow a state to submit a bridge inspection program establishing inspection frequency that supersedes the frequencies in current code. The program would be risk based and consider design of structure, construction materials, load ratings, observed conditions, and public safety.	WSACE (IdeaScale)	FHWA concurs in the concept of establishing bridge inspection frequencies based on rational criteria and is participating in an NCHRP project to explore development of a methodology to apply a risk/reliability approach to establishing inspection frequencies. FHWA believes a more rational approach to setting inspection frequencies would enable bridge owners to focus resources on bridges most in need of attention. No regulatory action planned.
MPO Planning	FHWA	Many MPOs are encountering State interpretations of	Community	The existing regulations require the proposed

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requirements		planning regulations dealing with financial constraint that suggest that the financial information from project sponsors in the TIP needs to include the exact location of the funding sources. This is a requirement that an MPO cannot verify or monitor, and it also potentially hampers the ability of a local sponsor to respond to financial situations and move funding where necessary. Essentially, funding sources are an issue between the states (who have funding agreements with local project sponsors) and local government. It would streamline and make more easy the financial constraint reviews if the issue were clarified and simplified.	Member (IdeaScale)	funding source be identified in the STIP/TIP. This is a key part of demonstrating fiscal constraint of the STIP/TIP. States and MPOs do have the flexibility to change the proposed funding source administratively in the TIP/STIP without an amendment or update. FHWA/FTA will consider opportunities for developing and issuing clarifying guidance or information in the future. No regulatory action planned.
23 CFR 635.114, award of contract and concurrence in award	FHWA	Modify when concurrence in award is required. This is largely a bureaucratic step that rarely, if ever, results in a change to an award, but usually adds 2 weeks to the bureaucratic process. The regulation should be modified to provide for concurrence in award only when there is a discrepancy in or problem with the bid -- an unbalanced bid, failure to adhere to DBE goals, etc.	Community Member (IdeaScale)	FWHA's statutory requirement under 23 U.S.C. 112(a) to ". . . require such plans and specifications and such methods of bidding as shall be effective in securing competition" carries through to the review of bids, bid responsiveness, and the award of contract. FHWA award concurrence is a key element to FHWA oversight in this area. No regulatory action planned.
23 CFR 636.201, design build selection procedures	FHWA	23 C.F.R. § 636.201 allows the FHWA to use two distinct types of design-build project delivery methods, the two-phase and single-phase selection procedures. Federal law limits every agency to one design build project delivery method, the two-phase selection process. See Design-build selection procedures, 41 U.S.C.A. § 3309 (recodified by Pub.L. 111-350, Jan. 4, 2011, 124 Stat. 3677). FHWA should repeal § 636.201 and conform the agency's project delivery methods to the requirements of the public contract laws enacted by Congress.	American Society of Civil Engineers (IdeaScale)	The cited Federal statute has no applicability to the Federal-aid highway program. The provisions in 23 USC 112 and 23 CFR Part 636 apply.
23 CFR 655.603(a), use of term bicycle trail	FHWA	23 CFR 655.603(a): CFR text refers to the term "bicycle trail" as falling under the application of the MUTCD. The definition of "trail" encompasses a wide variety of facility types, from rugged mountain "singletrack" to wide engineered paved pathways. The current wording could be interpreted as requiring MUTCD-compliant signs and	Community Member (IdeaScale)	The FHWA will take this comment into consideration during the next full update of the Manual on Uniform Traffic Control Devices.

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		markings on unpaved and rough hiking and mountain biking trails, which would be inappropriate, expensive, prone to vandalism, and creating serious visual and environmental impact. Revise "bicycle trail" to "bikeway" to be consistent with the wording on Page I-1 of the 2009 MUTCD.		
Other power driven mobility devices	FHWA	How to implement the new regulations allowing OPDMDs on bicycle and pedestrian facilities not designed for large, gas-powered vehicles and devices. The concerns are safe use of these devices for trail users and potential damage to the trail itself.	Community Member (IdeaScale)	FHWA will revise 23 CFR 652 after the next authorization, to incorporate any revisions in 23 U.S.C. 217 and other relevant sections of legislation. We will incorporate language consistent with the US Department of Justice regulation on other power driven mobility devices. Meanwhile, States may use FHWA's *Framework for Considering Motorized Use on Nonmotorized Trails and Pedestrian Walkways under 23 U.S.C. §217* to develop policies related to other power driven mobility devices. No current regulatory action planned.
23 CFR 252.13 - AASHTO guide for bicycle facilities	FHWA	23 CFR 652.13: Still refers to 1981 edition of the AASHTO Guide for Development of New Bicycle Facilities. AASHTO should be issuing the new (2011-2012?) edition of this design reference in the next 9-12 months. Change 652.13 to refer to the "most recent edition" of the Bike Guide, or change reference to the newest edition after publication by AASHTO.	Community Member (IdeaScale)	FHWA will revise 23 CFR 652 after the next authorization, to incorporate revisions in 23 U.S.C. 217 and other relevant sections of legislation. No current regulatory action planned.
23 CFR 658 Appendix A, Arizona Route Designation Changes	FHWA	23 CFR 658 Appendix A, Arizona: Route designations in this table have been made obsolete by changes in designations by AASHTO and Arizona DOT, and need updating. Specifically: Line 2: AZ 70 should be US 70 Line 6: US 80 has changed to SR 80 Line 7: This line needs to be replaced by 2 lines, reading: AZ 77, I-10 Tucson, AZ 79 Oracle Junction and AZ 79, AZ 77 Oracle Junction, US 60 Florence Junction Line 8: US 89 has changed to AZ 89	Community Member (IdeaScale)	In order to make this change the AZ DOT would need to submit to the AZ FHWA Division Office a change request. The AZ Division Office would verify that they are not adding any new roads, but are simply redesignating existing roads on the National Network (NN) and then the FHWA would publish a technical amendment through the Federal Register process. Without the further request of the AZ DOT, no independent regulatory action is planned.

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		Lines 13-15: All segments of US 666 have changed to US 191 Line 16: US 89 has changed to AZ 89 Line 19: Delete "(via AZ 85 Spur)" - SR 85 now runs directly to I-10 Line 25: US 89 has changed to AZ 79 Line 26: AZ 360 has changed to US 60 NOTE: Before finalizing this or other new or revised regulations affecting roadways on the State Highway System in Arizona, please consult with Arizona Department of Transportation Multimodal Planning Division to verify current route designations and statuses.		
CMAQ	FHWA	The 3 year operating limit for carpool and vanpool projects contained in the CMAQ guidance (not law or regulations) should be eliminated.	Community Member (IdeaScale)	The goal of the CMAQ program is to contribute to air quality improvement. We have consistently provided start-up costs and three-years of operational support for new or expanded systems. Support beyond that level is analogous to maintenance which is a State or local responsibility (23 USC 116).
Bike/Ped Guidance	FHWA	Retain and strengthen the guidance on the meaning of “due consideration” of bicyclists and pedestrians, which says “bicyclists and pedestrians should be included as a matter of routine, and the decision to not accommodate them should be the exception rather than the rule.”	America Bikes, National Complete Streets Coalition	FHWA intends to retain this guidance. The US DOT *Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations* released in March 2010 reemphasized the need to provide safe and convenient transportation facilities for pedestrians and bicyclists. No regulatory action planned.
23 CFR 1.33; 49 CFR 18.36(b)(3)	FHWA	Disagrees with FHWA policy opposing allowing the same firm to provide both design and construction engineering services. Commenter believes this is a legitimate business practice.	National Society of Professional Engineers	The FHWA will investigate the potential need for clarifying guidance on how FHWA’s conflict of interest provisions (23 CFR 1.33) pertain to the consultants providing services in different phases in developing and implementing highway improvement projects using Federal-aid highway program funding. No regulatory action is planned at this time.

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23 CFR Part 172, Consulting engineering & construction contracts	FHWA	Prepare a document, similar to FHWA Form 1273 used for construction contracts, to be used by FHWA and FTA for consulting engineering contracts. Issue: Unclear and complex making state compliance difficult to achieve. An entire audit guide has been developed by AASHTO to help in the understanding of these rules because they are not clear. In addition, the rule requires auditors to perform the overhead audits in accordance with GAO auditing standards. There are other more cost-effective options that should be explored.	APWA. Montana DOT	FHWA does not require a form similar to Form 1273 for consultant services projects due to Federal laws focusing primarily on the qualification based selection process. This suggestion would require Federal legislation to change the current provisions in law (23 U.S.C. 112 (b)(2)(B and C)) which currently requires an indirect cost rate to be developed in accordance with the cost principles contained in the Federal Acquisition Regulations (48 CFR 31) on any contract or subcontract awarded for engineering and design related services using Federal-aid Highway Program funding on projects directly related to a construction project. No regulatory action is planned at this time.
23 CFR 450.210, public meetings	FHWA	The regulations state that "to the maximum extent practicable ensure that public meetings are held at convenient and accessible locations and times" – holding traditional public meetings for planning has been relatively ineffective as a means for obtaining public involvement or comment. A later section of the regulations encourages use of electronic means for providing public information, but the requirement for public meetings still stands. Recommendation: This is outdated for most areas and should be done at the discretion of the DOT or MPO and the approaches to be used should be documented in the DOT or MPO public involvement plan but not dictated at the Federal level.	AASHTO, Colorado DOT	In the event that a public meeting is held, the DOT or MPO must, by statute and regulation: "to the maximum extent practicable ensure that public meetings are held at convenient and accessible locations and times." This topic is the subject of pending litigation and no regulatory action is planned at this time.
23 CFR 656	FHWA	Carpools and Vanpools currently have a gap in coverage of incentives for not-for profit, non-profit, and government agencies. The Commuter Benefit Program provides good incentive for these activities with reimbursements and tax credits for taxable organizations, but there is no provision to provide reimbursement or incentive for untaxed entities. Some sort of program should be added to provide incentive for these organizations to participate.	Missouri DOT	The FHWA will investigate this comment further to assess the scope of the issue raised, however, it has not found this to be an issue of significant concern and no regulatory action is planned at this time.

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Categorical exclusions	FHWA	Issue a guidance document or regulation clarifying the use of the CE for NEPA, and actively educate and encourage compliance with the current CE regulation to expedite project delivery. Promote CE best practices within FHWA divisions, state DOTs, and regional & local agency staff to help eliminate barriers	America Bikes	The FHWA does not believe a regulatory change is necessary to implement this change. We will reach out to America Bikes for more information on its best practices.
23 CFR 635.204(c); Force account work	FHWA	23 USC 112(b) allows the use of the force account method of contracting. However, FHWA's interpretation of rules [23 CFR 635 Subpart B] governing the use of force account contracting has severely restricted the use when force account work. The law and rules allow force account work when it is determined to be cost effective. 23 CFR 635.204, *Determination of More Cost Effective Method or an Emergency*, establishes the process for making a determination that force account construction is cost effective. Section 635.205, *Finding of Cost Effectiveness*, defines work that is considered to be cost effective for force account construction due to its "inherent nature" or to protect the "rights and responsibilities of the community at large." The adjustment of railroad or utility facilities are given as examples that are cost effective due to their inherent nature. FHWA has interpreted Section 635.205 *Finding of Cost Effectiveness* as the only conditions under which work by force account can be allowed. The FHWA interpretation renders Section 635.204(c) moot. FHWA guidance further states that "any noncompetitive construction contract method requires a cost effectiveness determination as well as an evaluation that demonstrates circumstances are unusual and unlikely to recur." The "unusual and unlike to recur" condition is not supported by statute. 23 CFR 635.204(a) states "Congress has expressly provided that the contract method based on competitive bidding shall be used by a State transportation department or county for performance of	AASHTO, Community Member (Idea Scale)	The FHWA is currently preparing an internal directive to clarify FHWA's policy on force account work. A change in the consultant selection process would require revisions to 23 U.S.C. 112 and 113. No regulatory action is needed or planned at this time.

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		highway work financed with the aid of Federal funds unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists.” The law does not require the state to demonstrate that conditions are unusual and unlikely to recur. Significant time and cost savings can be achieved though a greater allowance of force account contracting in accordance with Section 635.204(c). Recommendation: Allow force account contracting when the conditions of 23 CFR 635.204(c) are met. It has been our experience that the force account rule is applied unevenly within and among FHWA Division Offices. Better standards are needed in order to define when force account construction may be used. There are many "small dollar" programs such as Safe Routes to Schools and Transportation Enhancements which do not necessarily lend themselves to a full contract process. I would suggest that FHWA consider some lower-threshold approvals of force account construction, perhaps using categories similar to NEPA (i.e. categorically exempt, programmatically exempt) or exempt under a certain dollar amount. Safe Routes to Schools and Transportation Enhancements would be two great programs to start with.		
Remove barriers to delegation of the Environmental review process	FHWA, FTA, OST/P	FHWA should allow States to assume USDOT responsibilities without reducing flexibility to acquire right-of-way and perform design work prior to the completion of the NEPA process.	AASHTO	This proposal is not recommended. Judicial decisions on whether certain types of implementation activities carried out by a State violated NEPA focus on whether the activities have adverse environmental effects, limit the choice of alternatives, or bias the decision-making process. The cases typically have held that the actions by the State did not violate NEPA because of FHWA’s role as the ultimate NEPA decision-maker. This separation of roles made

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				unbiased decision-making possible. With FHWA removed from the process, the State would be deciding whether its action violated NEPA by biasing the decision-making process. This would create a conflict of interest.
23 CFR Part 752, Rest areas	FHWA, FMCSA, OST-P	Give State DOTs greater flexibility to offset costs of maintaining rest stops that would include allowing additional goods and services to be sold other than items that are dispenses from vending machines. Allow the installation of electric power stations at rest stops so that motorists can recharge their electric/hybrid vehicles, provided costs can be sufficiently recouped. Allow privatization of Rest Areas to help states keep rest areas open for truckers and the motoring public (to address safety concerns), as well as to help preserve funding for other transportation needs.	Illinois DOT, AASHTO	Current law does not allow fees to be assessed for charging electric vehicles in Interstate rest areas. State DOTs are required to comply with the current provisions in laws (23 U.S.C. 111(a) and 23 U.S.C. 131) which restrict the ability to advertise and provide commercial services within the right-of-way of the Interstate System. The FHWA believes a statutory change would be required to implement this proposal and no regulatory action is planned at this time.
NEPA/ARRA	FHWA, FRA, FTA	Currently FRA, FHWA, and FTA each have their own regulations regarding application of NEPA, and currently, for projects awarded funding under the ARRA, FRA is not authorized to accept NEP A documents completed under the authority of other modal agencies. It would be prudent and more timely if FRA could accept these documents approved by other modal administrations as fulfilling NEP A requirements with just the addition of an addendum covering any specifics that FRA requires. This would greatly expedite the review/approval process for some of the ARRA projects which have already cleared NEP A under either FHW A or FT A.	NC DOT Also submitted by David Foster	FHWA and FTA have the same NEPA regulations at 23 CFR 771. FRA can adopt FHWA and/or FTA NEPA documentation in accordance with CEQ regulations and supplement them as needed to fulfill FRA requirements to complete their NEPA review. No regulatory action planned.
NEPA/CEs	FHWA, FRA, FTA	FHWA regulations allow CEs from a list of specific project types, and they also allow CEs for projects not listed specifically, but that with a minimal amount of documentation can be shown appropriate for the CE status (often referred to as "documented CEs"). FRA regulations do not currently allow this type of CE, It would be very expedient to modify FRA regulations to	NC DOT Also submitted by a Community Member	FHWA does not have purview over FRA's NEPA procedures. Action would need to be taken by FRA to modify their procedures for processing Categorical Exclusions.

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		allow "documented CEs"		
Shift federal focus to the outcome of delivery of transportation benefit	FHWA, FTA	providing for universal pre-award spending to state and local entities; clarifying the transportation improvement program amendment process; extending NEPA delegation authority; removing redundant steps in the environment review process; and providing for modular or scenario-based conformity determinations	Orange County Transportation Authority	This comment presents a list of several recommendations that require more details for an appropriate consideration of what specifically is at issue here. The Transportation Improvement Plan (TIP) amendment process is described in detail in 23 CFR 450.326, 450.324, and 450.104.
Encourage federal and state or local project managers to team together for project performance	FHWA, FTA	ability to enter into project and program delivery partnering plans; establishment of "prompt action" provisions at key decision points in the project approval process; establishment of a partnering award program to positively reinforce project action; creation and funding of liaison positions to move projects though decision chokepoints; and expansion of use of the joint permitting process.	OCTA	These recommendations can be accomplished administratively. No regulatory action planned.
Part 450	FHWA, FTA	DOT should require State DOTs and MPOs to improve reporting on transportation funding decisions and outcomes with the stated objective of achieving transparency of and convenient public access to information about the use of federal surface transportation funding. DOT's planning regulations currently require states and MPOs to provide certain information to the public but the lack of a stated purpose or clear expectations leads to inconsistent application of these requirements around the country. This situation can be addressed by using the model set by Administration management and reporting on ARRA (White House memorandum M-09-10). Like past ARRA reporting systems, data should be compiled, organized and made available on the internet through a plain-English website (Recovery.gov is a good model). Beyond that, a new federal surface transportation performance monitoring and reporting website should have built-in provisions for data access and analysis. A comprehensive glossary should be provided and data reporting from all agencies and grantees should be standardized to support both routine reports and ad hoc investigation. Greater transparency about the use of federal transportation funds will allow all users of the transportation system to monitor progress	Reconnecting America	Currently, the planning statute and regulations only require MPOs to publish a list of the projects for which funds under Title 23 or Title 49/Chapter 53 were obligated in the preceding program year. No regulatory action planned.

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		and identify inefficient or uncoordinated uses of federal funding.		
Part 450	FHWA, FTA	DOT should improve consolidated planning process between federally required long-range transportation, housing and environmental plans. Working closely with HUD, DOT should issue guidance to State DOTs and MPOs on ways to improve coordination between state and regional long-range transportation plans and federally-required consolidated housing plans. The implementation of HUD's Sustainable Communities grants will be an important opportunity for DOT to work with selected communities, particularly through DOT regional offices, to identify best practices as well as potential barriers and data needs from MPOs, transit agencies, and state DOTs, with an eye towards achieving a more simplified and consolidated planning process. Such a process will reduce inefficiencies at the local and regional level stemming from uncoordinated federal planning requirements.	Reconnecting America	FHWA and FTA have started to work with HUD to better align planning and program activities, for example as part of the TIGER II grants. Through the DOT/HUD/EPA partnership, it is an area we are continuing to explore. It is important to emphasize, however, that because FHWA and FTA do not approve the transportation plans of States and MPOs, the agencies will need to rely upon non-binding guidance for promoting more fully coordinated plans and planning processes. No regulatory action planned.
Part 450	FHWA, FTA	A modern, integrated budgeting tool for local and state project sponsors under FHWA would dramatically improve both program oversight and project spendout monitoring. These two tasks (budgeting and spendout monitoring) are currently being accomplished with the TIP/STIP documents and the Fiscal Management Information System (FMIS). The TIP/STIP amendment process is clumsy and not designed to take into account final bids on projects, change orders, and other facts of life in the project implementation world. Meanwhile, project sponsors are unable to easily monitor the relationship between their budgeted projects in the TIP/STIP and their obligated amounts in FMIS. Local project sponsors at a special disadvantage here because of their sub-grantee relationship with state DOTs. A further issue if the requirement for all federal funding changes to be accomplished by amendment to the TIP/STIP. While it is important to disclose these changes, the process of amending the TIP during project bidding and implementation can cause confusion and undue burden on agencies. Further, the use of the TIP to in effect monitor the budget for transportation projects	NYC DOT	Integration of the STIP/TIP with FMIS may be desirable and is the prerogative of the States and MPOs, however, it is not adopted as a requirement due to the complexities and technical capacity that would be involved. The current regulation provides flexibility to States/MPOs to set criteria for determining whether changes to cost and schedule of projects should be effected as "administrative modifications." Mapping is an effective approach to communicating the information associated with projects in the plan and TIP/STIP. However, it is not an administrative requirement because of the wide range of technical capabilities of MPOs and States precludes imposition of a technical standard. No regulatory action planned.

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		on a regional basis is typically a clumsy operation because of the multiple agencies involved. We recommend that the TIP/STIP be made more easily amendable if it is to be used continually as a budgeting document for federal funding. Finally, to maximize transparency, all projects in the federal program should be mapped in an accessible way for the public and for partner agencies through FMIS.		
NEPA process	FHWA, FTA, OST	Remove redundant steps in the current system of processing EISs in sequence. Modernize communication techniques built on internet based systems. Also recommend revisions to CEQ regulations	OCTA	The recommendation requires more details for an appropriate consideration. Revisions to CEQ regulation are not in the purview of FHWA.
Planning, NEPA and design processes (Sec. 106, Sec. 4(f) and Sec. 404)	FHWA, FTA, OST/P	DOT should maximize the overlapping of sequential project stages to incorporate planning decisions and documentation in NEPA and to maximize advancement of design detail to support NEPA. DOT should maximize overlapping FHWA, FRA and FTA NEPA practices. DOT should strengthen assurance that planning decisions will have standing in NEPA documents. DOT should help states maximize concurrency and eliminate redundancy of environmental processes conducted to support NEPA documents.	AASHTO	The comment does not provide any specific new regulatory proposal for our consideration.
Development and application of programmatic solutions	FHWA, FTA, OST/P	DOT should: 1) include clear regulatory language indicating that programmatic approaches are the standard way of conducting business. 2) provide maximum flexibility in the development of programmatic categorical exclusions. 3) expand funding and support for “in-lieu” fees for conservation banking and programmatic mitigation for natural and cultural resource impacts. 4) allow the states, through programmatic agreements, to conduct legal sufficiency reviews.	AASHTO	Efforts are underway within the FHWA’s Every Day Counts initiative, NCHRP and pending program work which can be accomplished under existing authority and eligibilities *Current regulation makes legal sufficiency an FHWA/FTA determination and the only clear authority for delegating the decision is under 23 U.S.C. 327.*
Reliance on Transportation Planning-Level Decisions	FHWA, FTA, OST/P	FHWA should develop specific regulatory language allowing FHWA to adopt in the NEPA process, decisions made in the transportation planning process, with regard to both purpose and need and the range of alternatives.	AASHTO	This suggestion would be most effectively accomplished by statutory revision. In Appendix A to the February 14, 2007, Planning Regulations and in 23 CFR 450.212 and 450.318, the regulations speak to using planning information from corridor or subarea planning

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				studies to produce purpose and need, and to develop and conduct preliminary screening of alternatives and elimination of unreasonable alternatives. 23 CFR 771.111(a)(2) states that the information and results provided by, or in support of, the transportation planning process may be incorporated into environmental review documents in accordance with 40 CFR 1502.21 and 23 CFR 450.212 or 450.318.
Designating One Lead USDOT Agency	FHWA, FTA. OST/P	FHWA should work with other DOT agencies to establish one USDOT agency as lead agency to approve plans, studies and/or projects with multiple agency involvement. Other impacted USDOT administrations would then participate as cooperating agencies.	AASHTO	This suggestion could be carried out currently. It would involve coordination and agreement by the other DOT agencies, and would depend on the details of the project. No regulation action is required.
Consultation on Methodology and Level of Detail. (Section 6002 environmental review process)	FHWA, FTA.,OST/P	FHWA should clarify that the requirement for agency consultation on issues of "methodology and level of detail" should be conducted during the scoping phase of the project, when methodologies are being developed. Additional consultation would only be necessary for large changes in project methodologies and/or level of detail.	AASHTO	FHWA guidance on the implementation of Section 6002 states that the communication on methodology and level of detail should be done as part of the scoping process.
At-Risk Detailed Design Prior to NEPA Completion	FHWA, OST/P	Flexibility is needed so that the State DOTs may continue to move forward with the project development process in a timely fashion using both federal and non-federal funding – at their own financial risk – prior to the finalization of the NEPA process.	AASHTO	This proposal is not recommended. Judicial decisions on whether certain types of implementation activities carried out by a State violated NEPA focus on whether the activities have adverse environmental effects, limit the choice of alternatives, or bias the decision-making process. The cases typically have held that the actions by the State did not violate NEPA because of FHWA's role as the ultimate NEPA decision-maker. This separation of roles made unbiased decision-making possible. With FHWA removed from the process, the State would be deciding whether its action violated NEPA by biasing the decision-making process. This would create a conflict of interest.
23 CFR 646.212, Federal share	FHWA/FRA	Issue: Ambiguous, needs clarification. This CFR addresses Railroad-Highway Projects and when federal funds would be eligible to participate in grade separation projects to provide space for more tracks. It requires	Montana DOT	The FHWA will investigate this comment further to assess the scope of the issue raised, however, it has not found this to be an issue of significant concern and no regulatory action is planned at

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		demonstration of "definite demand and plan" which is not defined and subject to interpretation. The percentage of funding that must be provided by the railroad companies is also unclear. A more definite statement of the reasonable time frame as 5, 10 or 20-year plan is also needed. Recommendation: The CFR could be amended to express "definite demand and plan" as an adequate engineering study including: 1) signature by a registered engineer; 2) provision of statistical analysis and other data that confirms there is a "definite demand"; 3) showing the proposed future track alignment under the highway overpass; 4) the time of future expansion; and 5) providing documentation the railroad company will commit funds for their future tracks. A more definite statement of the reasonable time frame as 5, 10 or 20-year plan is also needed. Secondly, the CFR could be amended to define the percentage or portion of the improvement funding, if any, which must be provided by the railroad company.		this time.
23 CFR Part 771	FHWA/FRA/ FTA	Allow a single modal administration's findings under NEPA to cover all modes without adoption by other administrations. Allow grantees to pursue separate environmental findings where multiple projects are planned spanning a number of years Extend the "shelf life" of environmental documents Specifically: 23 CFR 771.107 - amend to note that an "action" may be a single project in a more extensive program 23 CFR 771.129 - add seven year "shelf life" of EAs and EISs 23 CFR 771.133 - specifically note one DOT operating administration's approval is binding on all DOT	APTA	FHWA, FTA, and/or FRA often coordinate on multi-modal projects. The FHWA and FTA regulations address early coordination procedures (23 CFR 771.111). This allows for the concurrent development of NEPA documentation and environmental review, and development of a mutually acceptable process on a project case-by-case basis to enable each agency to make NEPA and project approvals on the proposed action. The regulations allow for environmental document “shelf-life” and “actions” to be defined as multiple projects or a single project, as appropriate and to meet other NEPA and program implementation requirements.

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		administrations		
23 CFR part 810	FHWA/FTA	ACT has a specific regulatory criticism as it regards 23 CFR Part 810. ACT members utilizing federal funding in support of TDM programs are generally receiving that funding from Title 49 Chapter 53 funds or from Title 23 under the Congestion Mitigation and Air Quality Improvement Program (CMAQ). In reviewing the Title 23 regulatory components of the program, it is clear these regulations have not been recently updated, notably when still including references to UMTA. The majority of the administrative work in conforming to current practice and needs is contained in guidance. ACT would strongly recommend that the Department look to conforming the regulatory structure and rules between Title 23 CMAQ and Title 49 Chapter 53 such that entities seeking funding in either or both of those two parts are able to adequately and effectively respond to program eligibility requirements.	Association for Commuter Transportation	By statute, the Federal transit program may fund any eligible transit project. By statute, the CMAQ program may fund only certain types of transit or highway projects that reduce pollutant emissions. The differing purposes of the transit and CMAQ programs and the differing precepts of eligibility for the two programs are what necessitate the different rules and guidance for the two programs. The commenter's suggestion would require statutory changes, not regulatory changes.
23 CFR 627.207; QA/QC Guidelines	FHWA/FTA	Concerned that FHWA and FTA quality assurance regulations and guidance are inconsistent.	National Society of PEs	FHWA has authority under 23 CFR 637 B to prescribe policies and procedures for materials and construction quality assurance in Federal-aid projects, but no such authority has been granted to FTA. Our regulations strive to ensure that inspectors and testing laboratories are qualified. We don't require that the laboratories be supervised by a Professional Engineer (PE); rather these results are then utilized by the State agency as part of their overall assurance effort. FTAs guidelines typically are limited to dealing with selection of consultant services.
23 CFR Part 810	FHWA/FTA	The regulatory structure between title 23 Community Multiscale Airmodeling Quality (CMAQ) and title 49 chapter 53 should be aligned such that entities receiving funding from both of these titles can apply the same standards to projects	Association for Commuter Transportation (ACT)	No change recommended. States have the flexibility to transfer CMAQ funds for transit use to FTA, and Title 49 requirements would then be applied.
CMAQ	FHWA/FTA	Require that transit projects eligible under title 23 CMAQ be administered by the FTA under title 49 chapter 53	ACT	No change recommended. As noted above, States can transfer CMAQ funds to FTA. Requiring a transfer could present issues for some quasi-transit projects, e.g. school bus

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				diesel retrofits.
CMAQ	FHWA/FTA	Change air quality regulations to adopt a modular or scenario approach to conformity. Establish through interagency MOU an initiative to minimize unnecessary delay due to iterative conformity determinations while encouraging recipients to build the capacity to undertake necessary analyses. A "Test & Evaluation" approach could be initiated jointly by FHWA and FTA with EPA to test the feasibility of such modeling & administrative procedures, and in the meantime, allow recipients to receive timely conformity approval.	OCTA	Defer to EPA. The conformity regulation is within the purview of the Clean Air Act.
NEPA/Programmatic agreements	FHWA/FTA	Expand the availability and use of programmatic agreements for additional CEs and focus on consistent, prompt review/approval. Also recommends revisions to CEQ regulations.	OCTA	This comment involves suggestions for the promotion of guidance. Therefore, specific response is not required in this context. Revisions to CEQ regulations are not in the purview of FHWA.
NEPA/23 CFR 625.309	FHWA/FTA	Allow property to be acquired concurrently with the contract procurement process, even concurrent with project construction for more than projects under unusual circumstances through a time consuming approval process. Amend regulation as follows to streamline project delivery: 23 CFR 635.309 (c)(3) The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. The State may request authorization on this basis only in very unusual circumstances. This exception must never become the rule. Under these circumstances, advertisement for bids or force-account work may be authorized if FHWA finds that it will be in the public interest. The physical construction may then also proceed, but the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right-of-way are protected against unnecessary inconvenience and disproportionate injury or any action	Maine DOT	Current regulations provide minimum safeguards for those impacted by a Federal Aid project. Requirements ensure that displaced occupants vacate a project area prior to construction while also allowing for exceptions when warranted.

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		coercive in nature. When the State requests authorization to advertise for bids and to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefore including identification of each such parcel will be set forth in the State's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification shall be provided in the bid proposals identifying all locations where right of occupancy and use has not been obtained.		
23 CFR 774.13/4(f)	FHWA/FTA	Change the exception for temporary occupancies of land to add flexibility while obtaining the same result, as follows: (d) Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f). The following conditions must be satisfied: (1) Duration must be temporary, *i.e.* , less *no longer* than the time needed for construction of the project, and there should be no change in ownership of the land;	Maine DOT	The FHWA does not agree with this suggestion. If property is needed for duration of construction, the project need would seem to be more than temporary. No regulatory action necessary.
Financial systems & timelines	FHWA/FTA	Projects funded under both FTA and FHWA programs must be reflected in states' STIPs. The two modal administrations have very different processes, terminology, timelines, and in some cases, preferences for how projects are represented in STIPs. This requires states to spend extra time weeding through two different and distinct sets of requirements. This is particularly problematic with the requirements that revolve around financial and information systems and we are often forced to hand enter project data and to specially manipulate data to wedge FTA projects into STIPs. The same planning laws apply to both highway and transit projects yet requirements associated with them vary by modal administration. Recommendation: Processes, timelines, information systems, and other process-related requirements imposed by all modal administrations should be the same. Consistency in the requirements of all federal modal administrations	AASHTO	FHWA and FTA have joint statutory and regulatory requirements and timelines for how projects are represented in the STIP/TIP. Projects are entered into the STIP/TIP prior to obligation of funds and entry of project information into financial and information systems.

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23 CFR 771.117, categorical exclusion	FHWA/FTA	Routine state of good repair projects within existing ROW/transit property that are routinely granted CE status after submitting documentation for approval should be moved to the list of projects in subsection (c) to save time & money & be consistent with the intent of subsection (e). Review projects of a recurring nature for inclusion under subsection (d)	American Public Transit Association (APTA)	As part of consideration of the new CEQ guidance on CEs, FHWA will consider adding and/or revising CEs. No regulatory action planned.
23 CFR 771.113, categorical exclusion	FHWA/FTA	Increase flexibility in projects eligible for CEs. Limiting projects to 30% design completion before issuing environmental findings delays projects & makes them more expensive, without benefit to the environment. For routine projects 30% barrier delays work rather than allowing it to continue concurrently with environmental review. For complex projects, necessary data often is not reasonably available until design has evolved beyond 30%. Practices under 23 CFR 771.113 should be updated to specifically allow the design process to continue during the course of environmental review and to allow issuance of design-build contracts in advance of environmental findings.	APTA, General Contractors Assn of NY repeated this comment	FHWA has already addressed this issue though its issuance of Order 6640.1A, *FHWA Policy on Permissible Project Activities During the NEPA Process*, in October 2010. No regulatory action planned.
23 CFR part 771, review time	FHWA/FTA	Update to include concrete timelines for DOT review of environmental documents	APTA	The recommendation requires more details for appropriate consideration.
23 CFR Part 771, 4(f)	FHWA/FTA	The “4(f) process” is the common reference to environmental review under 49 USC 303. The process protects, inter alia, historical properties and archaeological resources. In these two aspects, the 4(f) process is redundant with section 106 of the National Historic Preservation Act (NHPA), as well as a host of state and local statutes. These overlapping statutes lead to duplication of efforts and increased costs without affording additional protection to the properties and resources they are designed to protect. This is most evident in projects that include rehabilitation of historic stations or other transit infrastructure. To ease this burden without compromising environmental protection, DOT should revise 23 CFR	APTA	Section 4(f) law includes publicly owned historic properties and a statutory change would be required. However, for the particular project type cited, “rehabilitation of historic train stations or other transit infrastructure”, FHWA’s Section 4(f) policy paper allows for instances when Section 4(f) would not apply to these projects such as “in the case of restoration, rehabilitation or maintenance of historic transportation facilities (e.g. railroad stations and terminal buildings which are on or eligible for the National Register). Section 4(f) only applies when the facility will be adversely affected (36 C.F.R. 800.5) by the proposed improvement.” No regulatory action

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		Part 771 to affirmatively accept any finding under NHPA section 106 as satisfying the requirements of the 4(f) process as the latter relates to historical properties and archaeological resources.		planned.
NEPA process	FHWA/FTA	DOT should be required to act on project approvals within a set deadline	General Contractors Association of NY	The recommendation requires more details for appropriate consideration.
CMAQ	FHWA/FTA	In areas of high transit use, improvements to transit facilities will help retain high transit mode share - improving air quality Projects that improve the transit environment and help attract new customers/retain existing riders should be automatically eligible for CMAQ funding & should not have to be subject to case by case review and eligibility determination by FHWA	General Contractors Assn of NY	No change is recommended. Improvements to transit can be defined in many different directions, e.g. operational support. We have consistently limited such operational support to start-up plus three years. Removing the Federal review would not necessarily streamline project development and may diminish the positive impact of CMAQ transit projects on air quality. No regulatory action planned.
23 CFR 450.218(a)	FHWA/FTA	Recommend changing the sentence to read at least every two years, the State shall submit an updated STIP, for the same reasons included in the comment on 450.216 (a).	Hampton Roads TPO	States and MPOs are required update the STIP/TIP at least once every 4-years. They may update the STIP/TIP more frequently if necessary. Any change to the 4-year minimum STIP/TIP cycle in regulation would require a change in statute.
Inter-departmental coordination	FHWA/FTA/ OST	DOT should take a leading role in working through inter-agency coordination on transportation projects that require multi-departmental reviews, perhaps by requiring agreements between DOT agencies and other regulatory agencies that would establish documentation and timeframes for reviews required to meet all federal environmental and resource agency requirements	General Contractors Assn of NY	This suggestion could be carried out currently and is supported by FHWA by Section 6002 of SAFETEA-LU and related guidance. It would involve coordination and agreement by the other DOT agencies and resource agencies and would depend on the details of the project. No regulatory action planned.
29 CFR 3, Davis Bacon regulations	FHWA/FTA/ FAA	Requirement to submit weekly payroll from contractors and subcontractors is burdensome. Recommendation: Revise regulations to provide for receipt for certification only, without weekly payrolls, with periodic monitoring of wages paid	AASHTO	This is a US Department of Labor regulatory requirement.
Small project procedures	FHWA/FTA/FAA/FRA	To minimize process on small projects, allow States and Local Public Agencies to follow State procurement requirements and waive certain federal requirements. • Eliminate the requirement for receiving federal	Maine DOT	• A defined project scope and estimated cost are necessary for any authorization prior to incurring costs. • Buy America requirements are statutory

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		authorizations along the way and just have one authorization up front; • Eliminate the "Buy America" on these projects; • Automate CE process (if even need it) or if have a federal environmental permit, let them complete NEPA and CE; • Increase the threshold for the need for "Davis Bacon" rates to coincide with these projects; • Allow States to determine levels of material testing. Look at the finished product being the only real measuring stick for whether the project was successful. Communities would need to agree that they would not seek additional funding to fix any future issues for a set time frame (they own the responsibility for the elimination of process).		not discretionary. • Davis-Bacon threshold ($2,000 / contract) is set by statute. 23 CFR 637 already provides for states to set levels of material testing based on an approved quality assurance plan. Also, small purchase procedures (as specified in 23 CFR 172.5(e)) exist for engineering and design related services contracts with a total cost below the lesser of the Federal simplified acquisition threshold (currently established at $150,000) or the State's established threshold. For small purchase procurements, State and local public agencies must also follow the applicable State's laws, regulations, and procurement procedures. State and local agencies do not have the authorization to waive Federal requirements.
One NEPA finding within DOT	FHWA/FTA/FRA	FHWA, FRA & FTA should allow a single modal administration's finding under NEPA to be automatically accepted by all other DOT modal administrations	General Contractors Assn of NY	FHWA, FTA, and/or FRA often coordinate on multi-modal projects. The FHWA and FTA regulations address early coordination procedures (23 CFR 771.111) to allow for the concurrent development of NEPA documentation and environmental review and development of a mutually acceptable process on a project case-by-case basis to enable each agency to make NEPA and future project approvals on the proposed action.
Ensure Continued Use of Recycled Coal Combustion Residuals (such as Coal Ash) for Transportation Uses	FHWA/OST P	The US Environmental Protection Agency (EPA) is considering two options to regulate Coal Combustion Residuals (CCRs). The first option would list CCRs as a special waste when destined for disposal at surface impoundments or landfills, which could reduce or eliminate their use by stigmatizing them as a category of "hazardous waste." Under this proposal, CCRs would be regulated under subtitle C of RCRA. The second option would list CCRs as special waste; CCRs would	AASHTO	This is a proposed EPA action to list coal combustion residuals (including fly ash) as a hazardous material subject to cradle to grave Subtitle C RCRA regulations. In 2010, EPA posted two co-proposals in the federal register for comment. These two proposals included one alternate that would require fly ash to be handled as a hazardous

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		be regulated by issuing national minimum criteria. Under this option, EPA would regulate CCRs under subtitle D of RCRA.		material, and the second alternate would allow fly ash to be used as it is today (with increased guidelines for large disposals).
49 CFR Part 395	FMCSA	ARTBA believes the HOS regulations should not apply to drivers in the transportation construction industry.	American Road & Transportation Builders Association (ARTBA)	The Agency believes section 345 of the National Highway System Designation Act of 1995 provides sufficient relief from the HOS requirements for the construction industry. The statute provides a 24-hour restart to the weekly HOS limits. By contrast the restart for other motor carriers of property must be at least 34 consecutive hours. The Agency does not believe it would be appropriate to consider additional regulatory relief from the HOS regulations for the construction industry, beyond what Congress has already provided.
49 CFR 393.67	FMCSA	The ATA believes FMCSA should rescind its safety regulations concerning liquid fuel tanks used on CMVs. The ATA argues that NHTSA should address fuel tank standards in the FMVSSs	ATA	FMCSA believes it would be inappropriate to consider rescinding 49 CFR 393.67, at this time. Section 393.67 provides the only Federal regulations that fuel tank manufacturers use as minimum requirements for the design, testing and manufacture of CMV fuel tanks. The regulation does not impose on motor carriers the responsibility for the actual design and testing of fuel tanks and as such the existing requirements should not be construed as a regulatory burden on motor carriers. Because NHTSA's Federal Motor Vehicle Safety Standards do not cover fuel tanks, the removal of the requirement would leave a void in Federal regulations for fuel tanks on heavy trucks and buses.
49 CFR Part 382	FMCSA	OOIDA requested that FMCSA allow a performance-based, two-tier controlled substances testing program. Under this program, drivers who test negative on 5 consecutive random controlled substances tests and who have never had a positive DOT controlled substances test based on 49 CFR Part 40, would be	Owner-Operator Independent Drivers Association (OOIDA)	The Agency does not believe it would be appropriate to consider a rulemaking to change the standards that apply to all motor carriers employing commercial driver's license holders, at this time. And, administering the controlled substances requirements under these

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		removed from the pool of drivers subject to a 50 percent random testing pool. These drivers would be placed in a separate pool subject to a 25 percent random testing rate. OOIDA recognized that FMCSA might be reluctant to abandon the current random controlled substances testing program without evidence that a performance-based alternative would be more effective. The group suggested that FMCSA consider a pilot program in accordance with 49 Part 381, the Agency's regulations concerning waivers, exemptions and pilot programs.		circumstances would be impracticable considering the population of interstate and intrastate carriers. The Agency does not agree with OOIDA's suggestion for a pilot program. Because a pilot program would be intended to set the stage for a potential change to the regulations, the outcome of the pilot program would still leave unresolved, the difficulty in administering on an industry-wide basis, a performance-based alternative to the current 50-percent testing rate requirement.
49 CFR 390.23	FMCSA	Union Pacific requested that FMCSA amend its emergency relief provision under 49 CFR 390.23 so that railroad workers who are responding to emergencies such as derailments be included under the relief from the HOS rules	Union Pacific Railroad	The FMCSA acknowledges Union Pacific's concerns. In 2007 and 2008, FMCSA officials met with representatives of the Emergency Rail Service Restoration Coalition to discuss the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to operators of commercial motor vehicles (CMVs) responding to assist at train derailment sites. The FMCSA continues to believe that its current regulations include appropriate relief for workers engaged in certain derailment recovery activities.
49 CFR Part 395	FMCSA	NPGA stated that the propane industry is a seasonal industry with its greatest demand occurring in the winter or peak season (October through March). The group explained that FMCSA's emergency relief regulations, 49 CFR 390.23, allows for relief from the HOS regulations when there is an emergency declared by an appropriate Federal or State officials. NPGA believes that a permanent exemption from the HOS regulations should be provided for propane delivers within a 100 air-mile radius.	National Propane Gas Association	The FMCSA acknowledges NPGA's concerns about the delivery of propane. However, the Agency does not believe it would be appropriate consider, at this time, relief from the HOS rules beyond what Congress enacted in section 4147 of SAFETEA-LU. Section 4147 provides that certain FMCSA regulations, including HOS requirements, shall not apply to a driver of a commercial motor vehicle which is used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency if such regulations would prevent the driver from responding to an

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				emergency condition requiring immediate response.
49 CFR 382.107	FMCSA OST-ODAPC	Suggests removing the term "actual knowledge" of drug or alcohol use from the list of grounds for finding a violation of the FMCSA rules.	Roxanne Wyant (Public meeting comment – no docket submission)	If an employer learns reliably that a covered employee has engaged in conduct otherwise prohibited by the regulations, relating to use of illegal drugs or abuse of alcohol, it is fully consistent with the safety objectives of the regulation for the employer to treat that information as the basis for a violation of the rules, even if no drug or alcohol test had occurred. Although FMCSA does not plan a stand-alone regulatory action on this item, the public will have the opportunity to address this issue in the forthcoming rulemaking to establish a controlled substances and alcohol testing positive test results database. The NPRM is currently planned for publication by the end of 2011.
49 CFR Part 209	FRA	SRC contends that FRA's exercise of safety jurisdiction is applied unevenly because certain plant railroads that are confined to an industrial installation are exempt from FRA's safety jurisdiction, even though their rail operations may be more robust than railroads that are subject to FRA's safety jurisdiction.	SRC	As stated in the 49 CFR Part 209 Appendix A (Policy Statement), FRA has chosen as a matter of policy not to impose its regulations on certain categories of rail operations including plant railroads that do not provide service to other clients. FRA has limited rail resources, and based upon its knowledge of where the safety problems occur, it concluded that excluding plant railroads from its jurisdiction would help to conserve its limited resources without hindering safety. Moreover, FRA's decision to restrict the exercise of its authority in no way constrained the exercise of its statutory emergency order authority under 49 U.S.C. 20104, which is designed to address imminent hazards of death or injury. Plant railroads that provide rail service to other entities may request relief from FRA's safety regulations, pursuant to FRA's waiver procedures that are set forth in 49 CFR Part 211, with a

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				showing that a waiver is in the public interest and consistent with railroad safety. FRA is contemplating a clarification to the Policy Statement that would further explain its reasoning for the above conclusion.
49 CFR Part 209	FRA	SRC contends that there should be a distinction among public highway-rail grade crossings, i.e. based on traffic, when considering whether a tourist operation is insular and therefore not subject to FRA's jurisdiction. It suggests that certain highway-rail grade crossings present fewer risks than others.	SRC	A tourist operation is considered insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public – except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser – would be affected by the operation. FRA has chosen not to exercise its jurisdiction over insular tourist operations because of the more limited risks that face the public as a result of the confined features of these types of operations. To the contrary, a tourist railroad that operates over a public highway-rail grade crossing that is in use is subject to certain of FRA's safety regulations and all of the substantive provisions of the rail safety statutes because of the reasonable expectation that the safety of a member of the public could be affected. While there are varying degrees of risk to the public based upon the characteristics of the highway that is crossed by a tourist railroad, risks to the public still exist at all highway-rail grade crossings, thereby necessitating FRA's exercise of jurisdiction over those types of operations. Nonetheless, the regulated industry may request relief from FRA's safety regulations, pursuant to FRA's waiver procedures that are set forth in 49 CFR Part 211, with a showing that a waiver is in the public interest and consistent with railroad safety. Given the flexibility built into the Policy Statement, FRA does not believe that it is necessary to

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				revise this aspect of the Policy Statement at this time.
49 CFR Part 209	FRA	SRC asserts that FRA does not always consider the financial, operational, or other factors that may be unique to tourist operations when determining whether a particular rule will apply to a tourist operation.	SRC	As stated in the Policy Statement, even though FRA asserts broad jurisdiction over tourist operations, it works to ensure that the rules it issues are appropriate to the circumstances of the tourist railroad industry. For example, FRA does not exercise jurisdiction over insular tourist railroads, and it applies a limited number of its regulations to non-insular tourist railroads. Additionally, FRA has excluded all tourist railroads from certain of its regulations, i.e. 49 CFR Parts 238 and 239 (passenger equipment safety standards and passenger train emergency preparedness). Moreover, the regulated industry may request relief from FRA's safety regulations, pursuant to FRA's waiver procedures that are set forth in 49 CFR Part 211, with a showing that a waiver is in the public interest and consistent with railroad safety. Given the flexibility built into the Policy Statement, FRA does not believe that it is necessary to revise this aspect of the Policy Statement at this time.
49 CFR Part 172	FRA	UP comments that while it supports the training of employees who encounter hazardous materials in the workplace, the current regulatory language defining all railroad maintenance-of-way employees and railroad signalmen as "hazmat employees" is general, vague, all-encompassing, and its application is over-reaching. UP adds that the term "function specific" and the additional training these employees require should be re-examined and more clearly defined to include only railroad employees with job functions that truly require "function-specific" training. As an example, UP states that under the current regulations, a truck driver is a "hazmat employee" who requires function-specific training, when his only encounter with hazardous materials is filling the truck with diesel fuel.	UP	The Hazardous Materials Transportation Regulations that UP has commented on are promulgated by DOT's Pipeline and Hazardous Materials Safety Administration. The regulatory inclusion of railroad maintenance-of-way employees and railroad signalmen in the definition of "hazmat employee" and the requirement for hazmat training were statutorily mandated changes included by Congress in the Hazardous Materials Safety and Security Reauthorization Act of 2005 (Title VII of Pub. L. 109-59, 119 Stat. 1144 (August 10, 2005)). PHMSA made these Congressionally mandated changes to its regulations in a final rule published on December 9, 2005. 70 FR 73156. Because the definitions are established by statute, neither

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				PHMSA nor FRA may change them by regulatory action. PHMSA's December 9, 2005 final rule specifically provided that "function-specific training is not necessary for railroad maintenance-of-way employees and railroad signalmen who do not perform functions specifically regulated under the HMR." 70 FR at 73156. Under 49 CFR 172.704(e), such railroad maintenance-of-way employees and railroad signalmen are excepted from function-specific training. A UP employee who is not a maintenance-of-way employee or railroad signalman, who only drives a truck and does not otherwise perform any activities regulated under the HMR probably does not fall under the definition of "hazmat employee," and therefore would not be required to have hazmat training. As the agency responsible for interpreting the HMR, PHMSA is best positioned to provide an answer to any specific questions that UP may have about those regulations.
49 CFR Part 395	FRA	UP finds FMCSA hours of service regulations in 49 CFR § 395.3 problematic as applied to railroad employees who occasionally drive trucks as part of their duties.	UP	The hours of service laws for railroad employees that are enforced by FRA (49 U.S.C. ch. 211) establish limitations on the hours of service of railroad employees who perform the functions of a train employee, a dispatching service employee, or a signal employee, as those terms are defined in 49 U.S.C. § 21101, and FRA has neither statutory nor regulatory authority to address the hours of service of employees performing other functions who happen to work for a railroad carrier, and does not take a position on the FMCSA regulations to the extent that they might apply to railroad employees performing other functions. Because individuals who engage in installing, repairing, or maintaining signal systems are

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				defined as signal employees, those individuals are not subject to FMCSA regulations for any duty tour in which they perform these functions, even if they also operate a commercial motor vehicle within the duty tour. Instead, under 49 U.S.C. § 21104(e), those employees are subject to 49 U.S.C. § 21104's restrictions on the hours of service for signal employees. FRA is aware that individuals who are generally considered signal employees may operate a commercial motor vehicle and not perform the functions of a signal employee in a given duty tour, which could arguably result in these employees not being covered by any hours of service limitations.
49 CFR Part 228	FRA	SRC disagrees with a provision of FRA's hours of service recordkeeping regulations (49 CFR § 228.19) requiring railroad to report when employees have initiated on-duty periods on consecutive days in excess of the statutory maximum permitted, which it says are not appropriate to the short line and regional railroad operating environment.	SRC	The recordkeeping regulation at issue merely requires the reporting of activities that constitute service in excess of the statutory limitations provided in 49 U.S.C. § 21103, governing the hours of service for train employees. Because the statute prohibits requiring or allowing an employee to go or remain on duty after initiating an on-duty period for six or seven consecutive days until that employee has had the necessary hours off duty at his or her home terminal, FRA requires railroads to report when an employee has violated that statutory prohibition. However, the substantive limitations to which the commenter objects are statutory, and FRA does not have the authority to change them. The RSIA granted FRA authority to establish substantive hours of service requirements for train employees providing commuter and intercity rail passenger transportation, and FRA published

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				an NPRM on March 22, 2011, proposing such requirements and proposing to revise the corresponding recordkeeping requirements accordingly. The substantive hours of service limitations for freight railroads are still statutory and they will not be changed as a result of this rulemaking, nor will the relevant recordkeeping provisions necessary to determine compliance with the statutory requirements.
49 CFR Part 40	FRA	UP claims that the direct observation requirements for follow-up drug testing in 49 CFR Part 40 add additional costs to the testing process, strain the employer-employee relationship, and are not necessary.	UP	FRA has incorporated 49 CFR Part 40 into its alcohol and drug testing regulations at 49 CFR § 219.701. However, Part 40 is a regulation published by the DOT Office of the Secretary (OST), and FRA does not have the authority either to amend the regulation or to issue authoritative interpretations on its requirement.
49 CFR Part 218	FRA	UP comments that 49 CFR § 218.22(c)(1) should be updated to include remote control operators. The comment also states § 218.22(c)(5) should be revised to allow utility employees to perform additional functions.	UP	UP's comment requesting that § 218.22(c)(1) be updated to include remote control operators is already addressed by existing regulations. First, via 49 CFR Part 240, necessarily a remote control operator is a locomotive engineer. Next, with reference to UP's comment regarding the "need for a crew member to be in the cab," FRA currently permits remote control operations that utilize utility employees. FRA is willing to discuss this issue with UP further, or potentially provide a more formal interpretation if necessary. UP's comment states 49 CFR § 218.22(c)(5) should be amended to permit utility employees to perform any duties of a train person. However, as discussed in the preamble to the final rule implementing § 218.24, even train persons are also limited in the duties they are able to perform without blue signal protection. See 60 FR 11047, 11049 (Mar. 1, 1995). Section 218.22(c)(5) already largely encompasses the duties that any train person would be asked to

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				perform in the assembly, disassembly or classification of rail cars or operation of trains.
49 CFR Part 218	FRA	SRC comments that 49 CFR Part 218's minimum requirements for railroad operating rules and practices are unnecessary, as their own railroad operating rules are sufficient and did not need to be "federalized."	SRC	Part 218 of title 49 of the CFR was amended in 2008. The 2008 amendments were completed with industry participation with the assistance of the RSAC. Part 218 was amended after the occurrence of a high number of human factor caused railroad accidents. In response, FRA issued Emergency Order No. 24 and subsequently codified (See 73 FR 8442) many of the requirements of that Order at Subpart F of part 218. The final rule established greater accountability on the part of railroad management for administration of railroad programs of operational tests and inspections, and greater accountability on the part of railroad supervisors and employees for compliance with those railroad operating rules that are responsible for approximately half of the train accidents related to human factors. Since taking those actions and federalizing certain additional railroad operating rules, FRA's data shows human factor caused accidents have been reduced precipitously. Part 218 was promulgated by FRA in 1976 after Congress mandated that FRA issue rules on the subject of certain railroad operating practices. The Federal Railroad Safety Authorization Act of 1976, Pub. L. 94-348. The "purpose" statement at 49 CFR 218.1 that SRC refers to was published as a part of the initial implementation of Part 218. 41 FR 10904 (Mar. 15, 1976). As that section states, Part 218 only establishes minimum requirements, railroad operating rules may, and often do, impose more stringent requirements than does FRA.

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				The SRC's comment specifically references having to perform "banner checks". However, on small railroads such as the SRC where often trains may operate exclusively at restricted speed on uncontrolled track, banner checks are one of the only methods available to ensure locomotive engineers are operating at the appropriate speeds to be able to avoid train collisions. From a safety perspective, FRA views this particular type of operational test as extremely critical.
49 CFR Part 217	FRA	SRC states that operational tests should not be required to be conducted, as their own skills testing approach is more effective.	SRC	FRA disagrees with SRC's suggestion. The SCR references the requirements of 49 CFR 217.9(a) in its comment, which was amended to its current form in a 2008 rulemaking which was promulgated with the assistance of the RSAC. 73 FR 8442 (Feb. 13, 2008). Thus, the railroad industry participated in that rulemaking. The requirement that railroad's perform operational tests has been in place via FRA regulations since the 1970s, and is one of the cornerstones of helping to ensure that railroad employees comply with both applicable Federal safety regulations and railroad operating rules. The final rule implementing the Federal regulations governing the use of electronic devices by railroad operating employees took effect on March 28, 2011. 75 FR 59580 (Sept. 27, 2010). This final rule also requires that operational tests be performed on that specific regulation. FRA received extensive docket comments from the industry while promulgating that final rule, none of which objected to the incorporation of the long standing requirement that operational tests be performed, into this new regulation. See Docket No. FRA 2009-0118 at www.regulations.gov.
49 CFR Part 223	FRA	SRC believes that FRA routinely ignores one of the exemptions from its Safety Glazing Standards—specifically, § 223.3(b)(3), which exempts "locomotives,	SRC	FRA believes that it correctly applies the exemptions from the application of the Safety Glazing Standards. If the exemption applies,

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		passenger cars and cabooses that are historical or antiquated equipment and are used only for excursion, educational, recreational purposes or private transportation purposes.”		FRA considers the equipment exempted. FRA has provided guidance to its personnel on applying this specific exemption so that rail equipment is consistently treated in the same way for every railroad. For example, FRA’s guidance clarifies what is meant by “historical” or “antiquated” equipment—terms that could otherwise be open to much interpretation. SRC may simply have its own interpretation of the exemption. FRA welcomes further discussion of this issue. FRA plans to raise this issue with RSAC for participants’ comments.
49 CFR Part 231	FRA	SRC argues that all locomotives available on the market today are equipped with stairways in compliance with sections 231.29 and 231.30.	SRC	FRA agrees that locomotives available on the market today are equipped with stairways in compliance with sections 231.29 and 231.30. However, FRA believes that the regulation is needed to ensure that locomotives remain equipped. If the regulation were eliminated, manufacturers could build new locomotives that don’t meet today’s standard. That would result in an unsafe condition.
49 CFR Part 225	FRA	The railroad requires every employee to see a doctor; therefore, they are concerned that minor injuries are being treated the same as severe injuries. In addition, they would like FRA to update its reporting software for ease of reporting.	SRC	It appears that the commenter may have misunderstood FRA regulations. FRA current reporting requirements require railroads to report only those injuries and illnesses that meet the general reporting criteria listed in section 225.19. Requiring that the injury or illness meets the general reporting criteria (e.g., medical treatment, death, and loss of consciousness) ensure FRA is not capturing minor injuries or illness. Rather these injuries and illnesses are supposed to be substantial enough to require the creation of a paper trail. The Miscellaneous Amendments to Federal Railroad Administration’s Accident/Incident Reporting Requirements; Final Rule, 75 FR 68862, allow for electronic reporting and submission of data. The purpose of this change,

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				in addition to many of the other changes implemented by this final rule, is to ease the reporting burden for the railroads.
49 CFR Part 225	FRA	UP is concerned that FRA's new Form 150 will be overly burdensome on the railroad and ineffective because people will not want to respond.	UP	Existing regulations require railroads to conduct accident and incident investigations. The Form 150 will ensure that the investigations are conducted in a manner that will illicit specific information that will be helpful to the investigation. FRA does not believe that the form is overly burdensome. Pursuant to the current reporting requirements, railroads are required to ensure "complete and accurate reporting" of casualties. In order to fulfill this requirement, they should already be contacting individuals who were potentially injured by an event or exposure arising from the operation of the railroad to determine if they suffered a reportable injury. Moreover, they should be obtaining sufficient information to complete the Form FRA F 6180.55a and to provide FRA with casualty severity information. However, FRA has discovered that railroads routinely do not follow up with potentially injured highway users. FRA's Miscellaneous Amendments to Federal Railroad Administration's Accident/Incident Reporting Requirements; Final Rule, 75 FR 68862, do not create a new duty with regard to following up with potentially injured highway users in order to determine whether they sustained a reportable injury. Rather, the final rule requires that the railroad use the newly created Form FRA F 6180.150 and an accompanying cover letter to contact a potentially injured highway user and, if unsuccessful, to contact the highway user by phone. The preamble to the final rule explains that FRA understands that highway users often will not respond to these requests; however, the railroad is obligated to make a good faith attempt

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				to obtain this information. Moreover, FRA believes that the forms, in addition to a cover letter, which meets the requirements set forth in the final rule, are meant to encourage individuals to respond. Finally, if the railroad is unable to obtain information either in writing or by phone, it must make a good faith determination about reportability based upon the information that is available.
Whistleblower Complaints	FRA	AAR comments that OSHA's Occupational Safety and Health Review Commission has before it cases in which the issue is whether an employee believing the whistleblower protection statute, 49 USC 20109, has been violated can pursue remedies under both the Railway Labor Act and before OSHA. AAR believes that having simultaneous proceedings does not make sense.	AAR	FRA does not have authority to change OSHA's proceedings. The issue has been the subject of litigation that is still pending before the Department of Labor.
49 CFR Part 213	FRA	Amtrak states that inspection frequencies should be based on track conditions and other risk factors, such as the degree of right-of-way security, rather than track class. Fewer inspections should be required as the condition and security of track improve. Increasing the frequency of inspections based on track class alone is costly and unnecessary if increases in track class and higher speeds are accompanied by new trackage (or trackage that is in very good condition) and security enhancements.	Amtrak	FRA does recognize the importance of right-of-way security for the overall safety of a railroad system, and right-of-way safety plans are required by section 213.361 for operations on track Classes 8 and 9. Yet, FRA does not believe that these measures should themselves be used to reduce the inspection frequencies in Part 213, especially given the potential for defective conditions to develop that are wholly independent of any right-of-way security enhancements. Proper inspection of track is essential to safety. Track does not deteriorate at a constant rate. Factors such as freezing and thawing can cause track conditions to change rapidly, even for new track that has recently been laid. Track inspection frequencies have been based on operating speed because of its relationship to the derailment risk for a given condition. The higher the train speed, the higher the associated risk.

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49 CFR Part 213	FRA	AAR notes that automated track geometry inspection equipment can detect deviations that visual inspections cannot, such as tight gage defects that deviate only 1/16" from FRA's requirements. (Gage refers to the lateral distance between the two rails comprising a section of track.) If such an actual tight gage deviation is found, operating speeds need to be reduced to 10 mph until the condition is remedied. Yet, the AAR is unaware of any derailment attributable to tight gage.	AAR	FRA's safety limit for tight gage is based on limits for wheel spacing that have been established by the AAR and enforced by the AAR's interchange rules. When both back-to-back wheel spacing and wheel flange thickness are at their permissible maximums, there is little flange clearance, if any, when the track gage is at FRA's minimum safety limit of 56 inches. In order to prevent derailment, the limits on gage have to be compatible with the allowable wheelset dimensions. Tighter gage (of less than 56 inches) may result in either wheel climb or the failure of track components due to large wheel rail forces, or both. Both of these conditions represent derailment criteria. There is no accident reporting cause code assigned to tight gage in FRA's accident database, and that is why there is no information that specifically identifies an accident caused by tight gage. However, this does not mean that no track-related accident has been attributable to tight gage. For instance, tight gage is undoubtedly a causal factor in many "wheel climb" derailments
49 CFR Part 213	FRA	AAR states that FRA regularly issues citations for violations of its requirements for guard check gage and guard face gage in a frog (which is the crossing point of two rails). Yet, the AAR believes that the current standards are too stringent and provide no clear safety benefit, and that it is unaware of a derailment that has ever been attributable to a violation of these standards.	AAR	The purpose of these limits on guard check gage and guard face gage is to help ensure that wheels follow the appropriate flangeway through the frog and that trains do not derail. As in the case of FRA's limits for tight gage, these limits are also based on AAR's own limits for wheel spacing and have to be compatible with them. While there may not be data showing that these gage conditions were specifically the cause of an FRA-reportable derailment, FRA's accident database documents numerous derailments that have been attributable to worn or broken frogs. Guard face and check gage deviations increase

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				the likelihood that wheels will contact the frog tip/point—rather than be guided safely through the flangeway—resulting in chipped, worn, and broken frogs.
49 CFR Part 236	FRA	AAR disagrees with the method by which FRA calculates the frequency of its required monthly signal inspections, and asserts that they are too costly and don't take into consideration new technology, specifically, electronic health monitoring systems.	AAR	As stated in FRA's Technical Bulletin S-04-01, FRA has taken the position that its longstanding requirements for monthly signal and grade crossing tests mandate that such tests be performed at least once every 30 or 31 days. This Technical Bulletin was supported by a legal interpretation that was issued by FRA's Chief Counsel, in response to a 2004 request from CSX Transportation, Inc., for a written statement of FRA's position on this issue. FRA believes this position facilitates the timely testing and inspection of safety-critical devices at regular intervals to ensure these devices are able to perform their intended functions and, if they are not, that they are removed from service. FRA's longstanding requirements for monthly testing of signal and grade crossing systems are intended to impose minimum standards to ensure the safety of railroad operations. However, the regulated industry may request relief from these required monthly testing requirement, pursuant to FRA's waiver procedures set forth in 49 CFR Part 211, upon the presentation of adequate safety data to justify additional flexibility. FRA has already indicated that it might be willing to entertain a request for waiver relief based upon the proffered use of real time electronic health monitoring of safety-critical elements of grade crossing warning systems.
49 CFR Part 236	FRA	Amtrak asserts that three specific regulatory provisions (49 CFR §§ 229.21, 236.586, and 238.311) contain requirements to perform mechanical inspections on the "next calendar day" and/or "within 24 hours". Amtrak asserts that these terms are used interchangeably, but do not have a consistent meaning in each instance.	Amtrak	For the sake of consistency with FRA's other test and inspection requirements contained in 49 CFR Parts 234 and 236, FRA believes that the daily or after-trip test required by section 236.586 should be performed once every 24 hours or within 24

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		Thus, depending on the context, these terms could be interpreted to mean 23 hours and 59 minutes or up to 47 hours and 59 minutes.		hours before departure on each trip.
49 CFR Part 234	FRA	SRC asserts that railroads that routinely operate at restricted speed (which requires the engineer to operate the train in a manner that would allow him/her to stop the train short of any danger, obstruction, or other hazard) should be exempt from the requirement contained in 49 CFR § 234.9 to report each activation failure of a highway-rail grade crossing warning system within 15 days.	SRC	FRA requires the submission of a written or electronically generated activation failure report within 15 days of the occurrence of an activation failure, so that FRA can maintain comprehensive records of activation failures that occur at highway-rail grade crossings nationwide. The information presented by these records is then evaluated and analyzed for a variety of safety-related purposes, in order to improve the reliability of active warning systems to operate properly and as intended, and therefore the overall level of grade crossing safety. By giving railroads 15 days within which to compile and submit this information, FRA attempted to minimize the reporting burden on railroads, while providing sufficient time within which to provide as comprehensive a report as possible. Aside from the speed of rail operations, there are a number of factors that influence the level of risk at a highway-rail grade crossing, such as the speed and volume of motor vehicle traffic, the presence of sight distance obstructions, and the use of the crossing by hazardous material carriers, school buses, and emergency response vehicles. Regardless of the speed of rail operations at the crossing and possible lower level of risk of a train striking a vehicle when the train is being operated at a slow speed, the loss of warning provided by

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				the active warning devices at a highway-rail grade crossing could result in a collision caused by a motor vehicle striking the side of even such a slow-moving train. Review of FRA's activation failure statistics reflects that the SRC has not filed an activation failure report within the last 20 years inclusive of 2010. Therefore, any potential burden that may have been imposed by this reporting requirement on the SRC seems minimal at best.
23 CFR part 771	FTA	The DOT environmental process takes an inordinate amount of time. Because projects must have environmental clearances to be considered "shovel-ready," the wait to obtain clearances often prevents the timeliest projects from qualifying for funding, effectively reserving shovel-ready funding for non-critical projects or projects past their useful life.	Nat'l Society of Prof. Engineers (NSPE)	Shovel-readiness is related to projects funded under the Recovery Act (ARRA). FTA has completed the NEPA reviews of all ARRA projects in time to obligate all ARRA funds for transit by the statutory deadlines.
23 CFR part 771	FTA	Unless an environmental impact statement is required, transfer environmental review responsibilities entirely to the state DOT.	Nat'l Society of Prof. Engineers (NSPE)	FTA grant applicants are primarily transit authorities, not State DOTs. Delegating any NEPA responsibility for transit to a State DOT with no transit experience and no transit responsibility would not be appropriate.
23 CFR part 771	FTA	Base decisions on reasonable analyses that can be completed within established budget and time constraints so that projects are not delayed unnecessarily over minor edits or subjective review comments that have no bearing on decision-making. The current process does not seem to consider whether the benefits justify the costs of performing exhaustive analyses and preparing lengthy documents.	Nat'l Society of Prof. Engineers (NSPE)	FTA agrees that the environmental bottom line is performance, not process, and is prepared to revise its environmental procedures to reduce or eliminate process requirements whenever firm commitments to specific, acceptable environmental outcomes are made upfront by the transit grant applicant.
23 CFR part 771	FTA	Establish guidelines that eliminate the requirement for indirect and cumulative impacts analyses in all categorical exclusion documents, regardless of whether the project is adding capacity. Under NEPA,	Nat'l Society of Prof. Engineers (NSPE)	FTA policy is to not require or ask for an analysis of indirect or cumulative impacts for CEs.

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		transportation projects classified as CEs do not individually or cumulatively have significant effects. The purpose of a CE is to reduce paperwork and delay for projects where an environmental assessment or environmental impact statement is obviously not necessary.		
23 CFR part 771	FTA	Accept electronic submissions of documents.	Nat'l Society of Prof. Engineers (NSPE)	FTA accepts electronic submissions of documents.
23 CFR part 771	FTA	Currently all environmental requirements and/or permits must be completed before Right of Way (ROW) dollars can be obligated and the ROW acquisition process begun. It would significantly streamline the process if ROW acquisition could begin after an assessment of environmental requirements is made.	American Public Works Assoc.	The acquisition of right-of-way (ROW) prior to NEPA completion would prejudice the consideration of alternatives to avoid or reduce the environmental impacts of the alternative whose ROW has already been acquired.
23 CFR part 771	FTA	States with strong environmental protection laws should be allowed to provide reciprocity for NEPA or eliminate the permitting duplication by charging the lowest level agency with the responsibility. NEPA is an additional layer to a number of state and other federal environmental requirements.	American Public Works Assoc.	The requirements cited primarily involve statutes, not regulations, and the suggestions would require statutory changes. To the extent the comments do involve regulations, they are the regulations of agencies outside of DOT.
23 CFR part 771	FTA	Extending the “shelf life” for environmental documents would significantly reduce costs and schedule delays. Specifically, the shelf life for EAs and CEs should be extended to match the corresponding period applicable to Environmental Impact Statements (EIS) – ten years. Additionally, the period between draft and final EISs should be extended from the current three years to seven years. Conditions, particularly in urban areas, are unlikely to change in any significant way in these extended periods and where no such changes have been observed, extending the “shelf life” of these documents could be accomplished without threat to the environment.	APTA, MTA	There is no absolute timeframe concerning the “shelf life” of any of the NEPA documents pursuant to FTA’s NEPA regulation. Whether or not supplemental environmental review must be conducted depends on whether changes to the project or the surrounding environment since approval of the last environmental document would have significant environmental effects. The timeframes in the existing regulation serve to ensure that documents that reach a certain age (three years) without any major actions advancing the project are reviewed to ensure the documents remain valid. Documents newer than three years old might require supplemental environmental work, yet documents much older than three years might be determined valid based on FTA’s reevaluation. The “shelf life” is based on

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				environmental impacts, not specifically on age or the type of document.
23 CFR part 771	FTA	23 CFR Part 771 should be updated to include concrete timelines for DOT review of environmental documents. Failure to complete environmental reviews in a timely manner directly impacts project schedules and budgets. Project sponsors shoulder these burdens without regard to how reasonable or unreasonable the delay may be. Establishing concrete timelines will provide a degree of certainty for project sponsors and, subject to fiscal law limitations, a basis on which DOT's operating administrations can assume the financial burdens imposed by their failure to conduct timely reviews.	APTA	FTA is proposing to streamline its environmental procedures to the maximum extent allowed by law. FTA recently hired environmental protection specialists in most of its regional offices whose job is it is to expedite the NEPA process. With the hiring of regional environmental protection specialists, FTA is now taking management responsibility for major NEPA documents and will be providing day-to-day guidance and direction directly to the grantee's NEPA contractors to ensure that the draft documents that the contractor produces are worthy of concurrent reviews by all who must review it.
23 CFR part 771	FTA	The problem with NEPA is that the roles of different resource agencies are not clear and through repeated inquiries for information, agencies have been able to delay certain projects almost indefinitely. Recommendation: Set statutory timeframes regarding the amount of time resource agencies have to request information regarding a project and the amount of time resource agencies have to review environmental documents with the understanding that unless substantive comments are received by a set timeframe, the documents are deemed satisfactory by the resource agency. Projects which currently take three to even ten years would take months to a year while still maintaining an assessment of impacts to the social, natural and cultural environment.	Maine DOT	This suggestion will require statutory changes. However, to some extent, its objectives may be partially achievable through more active FTA management of the environmental process. FTA intends to take on such management responsibilities.
23 CFR part 771	FTA	Under the "4(f) Process" and the National Historic Preservation Act. The "4(f) process" is the common reference to environmental review under 49 USC 303. In some aspects, the 4(f) process is redundant with section 106 of the National Historic Preservation Act (NHPA), as well as a host of state and local statutes. These overlapping statutes lead to duplication of efforts and increased costs without affording additional protection to the properties and resources they are designed to protect. DOT should revise 23 CFR Part 771 to	APTA	Section 106 and Section 4(f) are substantively different statutory requirements that often both apply independently to FTA-funded projects. This suggestion cannot be accomplished through a regulatory change, it would require a statutory change. During the development of the bills that eventually became SAFETEA-LU, Congress considered the suggested change and rejected it.

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		affirmatively accept any finding under NHPA section 106 as satisfying the requirements of the 4(f) process as the latter relates to historical properties and archaeological resources.		Instead, SAFETEA-LU amended Section 4(f) to allow a *de minimis* impact determination when the Section 106 review results in a no-adverse-effect determination.
23 CFR part 771	FTA	For smaller agencies, automate CE process (if even need it) or if have a federal environmental permit, let them complete NEPA and CE.	Maine DOT	FTA plans to take primary responsibility for complying with NEPA when the project sponsor is not capable of performing that task. The recent hiring of environmental protection specialists in each FTA regional office should allow this approach.
49 CFR part 661	FTA	Eliminate Buy America requirements for small federally funded projects.	Maine DOT	Buy America is a statutory mandate attached to the use of FTA funds. FTA has issued a categorical public interest waiver for small purchases (i.e., procurements under $100,000). See 49 CFR 661.7, Appendix A, paragraph (c).
49 USC 5325(b)	FTA	FTA and FHWA draw the false conclusion that all engineering services involving real property are directly related to construction. Engineering includes services such as traffic studies, bridge inspections, and drainage studies that involve real property but may or may not lead to construction. As such, FTA and FHWA should amend their regulations to include all engineering services covered under the Brooks Act.	NSPE	FTA's compliance with 49 USC 5325(b), its "Brooks Act" type statute that requires grantees to select Architect and Engineers using a qualifications-based procurement, is consistent with Federal policy adopted for implementation of "Brooks Act" type statutes throughout the Federal Government. There is no need from FTA's perspective to expand the scope of this statutory requirement.
49 CFR part 604	FTA	Overall, this rule unduly burdens the general public that relies on public transportation, disproportionately emphasizes private interests over the public interest, and is inconsistent with public policy concerning accessibility to public transportation. Specifically: The rule exceeds the statutory requirements, ignoring both the requirement that the prohibited service be "outside the urban area in which [the public agency] provides regularly scheduled public transportation service" and the protection afforded to prevent a covered public agency from "foreclosing a private operator from providing intercity charter bus service if the private operator can provide the service." The rule has evolved from protecting private charter companies from unfair competition in intercity service to providing private companies an entitlement to provide	Big Blue Bus	The current charter regulation is the result of a Congress ordered negotiated rulemaking. Both private charter operators and public transit agencies were represented on the negotiated rulemaking committee. The current rule affords ample flexibility for certain types of events, provides a more straightforward definition of charter, and makes exceptions as appropriate. The current rule is based on the statutory prohibition that Congress created to prevent public transit agencies, who receive federal assistance, from competing with private charter operators. The exception for regional or nationally significant events is still in the current regulation, but the public agency must at least

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		charter service, regardless of the effect on the general public and based on an ever-expanding definition of “charter service”. The rule redefines certain established public transportation services as charter service, resulting in service gaps and increased costs to transit passengers. The commenter cites a litany of cases in which public transportation agencies were able to provide intracity service for major events under the previous rule but are now prohibited from doing so, and the ensuing problems. The rule should be amended to lessen the burden imposed on the general public and to increase the benefit provided to the public by the rule. Local governments should not be prevented from using public facilities they – and their taxpayers – already support as a resource in putting on public events. The rule should be amended to remove inconsistencies with major public policy requirements. The inability of a private provider to provide equipment that is consistent with major public policy requirements such as the ADA should be a per se exception to any requirement that a public institution or sponsor of a major public event use a private charter provider.		consult with and utilize private operators. If a public transit agency wishes to provide service for a smaller community event, it can do that by providing the service for free or charging the regular fare. An agency can also create seasonal service with a fixed schedule and route for a regular fare. There is no reason to expand the definition to exclude public events, because public transit agencies are able to provide service for those events by not charging a premium fare or receiving a third party subsidy.
49 CFR part 604	FTA	The current definition of charter service in 49 CFR 604.3 effectively bars public transportation agencies from supporting large community events that are open to the public and draw substantial patronage from throughout those communities. The definition of charter service should be amended to exclude transportation provided to the general public for events or functions that occur on an irregular basis or for a limited duration, regardless of whether the service is paid for in whole or in part by a third party or whether a premium fare is charged, so long as the service is available and open to the general public attending public events or functions and the recipient of federal funds determines the routes and schedules of the service provided.	APTA	Although the old regulation allowed for a special exception related to large events, the events envisioned were one of kind events like the Olympics, not general large events as the comment implies. The exception for regional or nationally significant events is still in the current regulation, but the public agency must at least consult with and utilize private operators. If a public transit agency wishes to provide service for a smaller community event, it can do that by providing the service for free or charging the regular fare. An agency can also create seasonal service with a fixed schedule and route for a regular fare.
49 CFR part 604	FTA	Many public transportation agencies operate historic or other vehicles not readily available from private providers. These vehicles are highly desirable for service	APTA	With regard to the question of historic vehicles or trolleys being excluded from the charter definition, it is pretty clear that these vehicles are almost

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		in wedding parties, family reunions, and other similar events. The current charter service regulation allows no distinction between these aesthetic vehicles and other buses. 49 CFR Part 604 should be amended to acknowledge the qualities that distinguish vehicles of this nature and create an exception that would allow transit agencies to provide these services in the absence of similar vehicles available from private sources at reasonable prices.		exclusively used for charters. If a public transit agency can't find a use for the vehicle other than for charters, then they should dispose of it. If there is enough of a demand, then the private providers will purchase one.
49 CFR part 604/605	FTA	Allow Transit Systems to operate sightseeing charters and school bus trips.	Greater Peoria Mass Transit District	The definition of public transportation, found at 49 U.S.C. 5302(a)(10), provides, "The term 'public transportation' means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, sightseeing, or intercity bus transportation . . ." Only Congress can change this definition.
49 CFR 18.31, 19.3	FTA	Transit agencies can support affordable housing development near transit stations through the disposition of excess property. While there may be cases where property disposition is the best strategy for developing transit-adjacent properties, there are regulatory restrictions that make this type of development difficult. According to 49 C.F.R. § 18.31 and 49 C.F.R. § 19.32, transit agencies are required to sell excess FTA-funded property for the highest possible return and must pay FTA the proportionate share of its interest in the property. This requirement puts affordable housing preservation and development at a disadvantage. Transit agencies are prohibited from donating property (or selling it at a discounted rate) to affordable housing interests.	National Housing Conference	The Common Grant Rule (49 CFR Parts 18 and 19) is not within the purview of FTA. Therefore, FTA is not able to amend unilaterally many of the regulations the commenter cites as barriers to joint and transit-oriented development. Note: There is a statutory provision unique to FTA that can facilitate the development of affordable housing. Section 5334(h) of Chapter 49, United States Code, allows FTA grantees to transfer real property funded with Federal dollars to local government entities under certain conditions without repayment to FTA.
N/A	FTA	There currently is significant overlap in material covered by different FTA reviews. FTA and grantee resources would be used more efficiently if contractors conducting Financial Management Oversight, Project Management Oversight, Procurement, Triennial or other reviews could share pertinent information. This will reduce the cost to	MTA	FTA is currently performing a comprehensive review of its oversight functions.

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		USDOT and allow USDOT and grantees to make more efficient use of their staff. To take into account if similar topics were reviewed within the last year, or if more detailed reviews are anticipated in the coming year, to allow for only one review of the topic within the year.		
N/A	FTA	Wherever feasible, USDOT should utilize existing oversight mechanisms (e.g., annual certifications, quarterly reports, Triennial Reviews, etc.) to avoid retaining additional oversight consultants.	MTA	FTA is currently performing a comprehensive review of its oversight functions.
49 CFR part 633	FTA	Identify all FTA and Project Management Oversight (PMO) reviews to be conducted and project information required so projects are not delayed at key milestones.	MTA	FTA is currently performing a comprehensive review of its oversight functions.
49 CFR part 611	FTA	Combine Entry into Preliminary Engineering and Entry into Final Design into a single Entry into Project Development to avoid stops and starts that can erode a project sponsor's credibility with local officials.	MTA	The approvals for Preliminary Engineering and Final Design have already been combined into a single approval for Project Development for Small Starts projects. Making the same change for New Starts projects would require changes to the statute.
49 CFR part 611	FTA	Expand pre-award authority issued at the time of the Record of Decision to include early construction activities. This will allow the project to continue to advance with local funds and eliminate the need for Letters of No Prejudice.	MTA	FTA greatly expanded pre-award authority and streamlined its LONP policies through policy guidance issued in September 2009. FTA believes requiring LONPs for the start of construction activities, with the exception of utility relocation which is covered under pre-award at approval into final design, is prudent. FTA's streamlining of the LONP process implemented in 2009 shortens the timeframe for approval, thereby reducing any impact on project schedules.
49 CFR part 611	FTA	Create a jointly-developed FTA Agency schedule with due dates for all parties involved, including consultants.	MTA	This is already occurring. More than five years ago FTA began jointly developing individual project roadmaps with each project sponsor laying out the steps involved to reach the next major milestone. These roadmaps include anticipated dates for submittal of information and completion of activities for all parties.

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49 CFR part 611	FTA	Ensure mutual understanding of FTA decision points and all interim steps as early in the process as possible. This will build more predictability into the process.	MTA	FTA works with each project sponsor to develop a roadmap outlining the steps and timeframes necessary to meet the next major milestone in project development. This process has been in place for more than five years.
49 CFR part 611	FTA	USDOT should consider allowing projects with Full Funding Grant Agreements to defer the local match. This is standard practice for other FTA grant programs would reduce the cost to grantees of financing transit projects. The FFGA coupled with the Triennial Review and the Financial Management Oversight process can be used to ensure that local match will be provided as required.	MTA. APTA	FTA has sufficient flexibility under current regulations and guidance to allow deferred local share for New Starts grants at time of grant award if specific circumstances justify it. For example, although our policy is not to allow grantees to defer local share for New Starts, we allowed it where needed for the ARRA New Starts grants because this was an unexpected surge of Federal funding earlier than expected in the project. Typically, however, FTA would not allow it for New Starts given the need for New Starts grantees to have a secure and committed source of local funds to support the project as part of financial capacity.
49 CFR part 611	FTA	Allow New Starts funds to be used for preliminary engineering for transit projects even if funding through the third phase of construction is not yet finalized. Paradoxically, it is difficult to finalize a full financing plan until the project has gone through preliminary engineering and a firm cost estimate has been identified. Conversely, highway projects can advance through preliminary engineering without the assurance of being fully funded. Transit projects should be afforded the same treatment as highway projects, thereby, making the development of firm cost estimates more accurate, which is important to potential project funders. This will in turn make the New Starts process more conducive that will not only get transit projects underway more quickly, but also allows such projects to be managed more efficiently.	Association for Commuter Transportation	The comment is a bit unclear. If a project has received an appropriation of New Starts funding from Congress, it may used to pay for preliminary engineering once the project is approved by FTA into preliminary engineering. To be approved into preliminary engineering, the statute requires that the project be evaluated and rated under the statutory project justification and local financial commitment criteria and receive at least a “Medium” overall rating. FTA does not require that funding sources be committed before it will approve a project into preliminary engineering. Rather, FTA requires only that a reasonable plan for funding the project be identified.
49 CFR part 611	FTA	The term “project” itself has been expanded through practice and should be limited to the statutory definition found in 49 USC 5302(a)(1). FTA regional offices have, in some cases, taken an overly expansive view of what is	APTA	The Federal statutes and rules identified by the FTA Master Agreement must be applied to all activities, facilities, and equipment funded by an FTA grant. For New Starts, “project” activities,

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		included in a project and thus subject to federal rules and oversight. As a result, FTA grantees have been required to subject locally funded, unrelated work (e.g., replacing light rail catenary wire) to federally-assisted projects (e.g., rehabilitation of light rail vehicles) based on tenuous links (e.g., both are aspects of an existing light rail system). This both slows and adds expense to locally funded projects with no offsetting benefit.		facilities, and equipment are identified in the Scope of Work under a Full Funding Grant Agreement, which is always the subject of negotiation between FTA and a grantee. On a number of occasions FTA has allowed a grantee to exclude certain items from a Scope of Work when the grantee was able to demonstrate those items could and should be accomplished separate from the New Starts project.
49 CFR part 611	FTA	Eliminate the requirement for receiving federal authorizations along the way and just have one authorization up front.	Maine DOT	Authorizations are required by the Federal surface transportation statutes, which are the prerogative of Congress, not FTA.
Guidance - CMAQ	FTA	While there is no statutory time limit on using CMAQ funding for a project, DOT's operating administrations have administratively limited funding to a maximum of three years. DOT should allow operating subsidy and transportation travel demand projects to continue to qualify for CMAQ after three years as long as they continue to demonstrate net air quality benefits to air quality non-attainment areas. Additionally, CMAQ funding is routinely refused in situations where net air quality benefits are difficult to quantify although intuitively obvious. We believe DOT should deem projects that increase transit capacity to benefit air quality without additional analysis.	APTA	Transit operating expenses are not eligible for FTA assistance except at very small transit agencies. At larger transit agencies, CMAQ funds may only be used for initial operations of an emissions-reducing capital project. No change is warranted.
Guidance - CMAQ	FTA	The Department could require that transit projects eligible under Title 23 CMAQ be administered by the Federal Transit Administration under the rules and regulations of Title 49 Chapter 53. The advantage of this requirement is that the inconsistent rules around the definitions of "operating" and "capital" expenses, Buy America, and eligible project components, would no longer matter, and instead the project would be administered by the subject matter experts. Very specifically, this would eliminate the confusion between capital and operating expenses that has been exacerbated by the 2008 CMAQ program guidance specifying a three-year limit on operating expenses for	Association for Commuter Transportation	To be CMAQ eligible, transit operating expenses must be associated with a transit capital project and only three years of such operating expenses can be covered by CMAQ. FHWA does not always transfer to FTA CMAQ funds that a State DOT plans to use on a transit project, but whenever CMAQ funds are transferred to FTA, the project is administered under the rules of 49 USC Chapter 53.

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		vanpool programs.		
Guidance	FTA	Bus rebuilding/enhancement projects typically cost less than half the price of a new bus and can extend the useful life by 8- 10 years. Rebuilding also presents opportunities to incorporate the most efficient technologies into existing fleets resulting in improved fuel efficiency and reductions in emissions. Many transit agencies continue to focus on replacement. The focus on replacement is partially due to the lack of clear direction on the most cost effective use of discretionary funds. U.S. policy makers seeking to cut deficits while maintaining needed services need to look to bus remanufacturing as a tool for cost effective savings. Policies favoring cost effective alternatives to replacement need to be unambiguously communicated to the transit agencies.	Midwest Bus Corporation	Whether to replace, remanufacture, rehabilitate, or retrofit a bus is a decision within the discretion of the local transit agency. FTA encourages transit agencies to explore vehicle remanufacturing as one of the means of extending a vehicle's useful service life.
N/A	FTA	To minimize process on small projects, allow States and Local Public Agencies to follow State procurement requirements and waive certain federal requirements.	Maine DOT	FTA's third-party procurement requirements are based on Federal statutes that can only be changed by Congress, and regulations set by Federal agencies other than FTA. FTA cannot "waive" a requirement based on statute or the regulations of another Federal agency.
49 U.S.C. 5333	FTA	Increase the threshold for the need for "Davis Bacon" rates to coincide with these projects.	Maine DOT	Labor regulations applicable to FTA-funded projects are established by the U.S. Department of Labor, not the Department of Transportation or FTA.
49 U.S.C. 5307	FTA	Calculate large urban areas by number of buses operated and not population. Allow large urban areas to use federal operating assistance.	Greater Peoria Mass Transit District	Congress has defined urbanized areas by population, and allows certain areas to use funds for operations. Only Congress can decide to calculate large urban areas by number of buses operated and not population. Similarly, only Congress can permit large urbanized areas to use their federal funds for operating.
49 U.S.C. 5302	FTA	The language should be changed to disallow HOV and HOT as authorized fixed guideways expenses. HOV and HOT lanes are highway investments, not transit investments. Running express bus on a HOT/HOV facility in no way changes a highway investment into a transit investment. The [2009 FTA State of Good Repair]	Ibrake4snakes	High Occupancy Vehicle lanes are included in the Fixed Guideways Modernization Program because Fixed Guideways are defined in Federal Transit Law Section 5302(a)(4)(A) as "a public transportation facility...using and occupying a separate right-of-way or rail for the exclusive

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		study also finds that, between 1991 and 2009, although the actual dollar amount of capital funding from Federal sources to the seven ["old rail city"] agencies increased, their share of Fixed Guideways Modernization funds—to "old rail cities" in particular—actually declined as new fixed guideways systems, such as bus ways and HOV lanes, entered the program." HOV and HOT are no more fixed guideways investments than GP lanes are. SGP for critical transit - real transit - should not be used to support highway expansion projects instead. HOV and HOT are *not* transit. This regulation needs to be updated.		use of public transportation and other high occupancy vehicles." The suggested change would require a change in the Federal Transit Law definition of a Fixed Guideway. Under current law FTA does not have the discretion to eliminate High Occupancy Vehicles from the definition of Fixed Guideways and such a change cannot be made by regulation.
49 U.S.C. 5309	FTA	We urge DOT to better align the funding practices of FTA and FHWA. Currently, FHWA recipients request and receive authority to proceed that allows them to immediately draw federal funds for their projects. FTA grantees, even those with pre-award authority to incur reimbursable costs, must wait for FTA grant approval before obtaining reimbursement. This delay, often six months or more, results in financial hardship on public transportation agencies forced to finance all project costs in advance of grant approval. DOT should reform the FTA grant practice to allow FTA grantees to undertake and be reimbursed for routine activities under a similar 'authority to proceed' in advance of grant approval.	MTA	Congress has provided by statute that FTA may not provide pre-award construction authority for capital investment projects simply because a Record of Decision has been signed. For example, FTA may not issue a letter of no prejudice for a capital investment project until ". . . the Secretary approves the plans and specifications for the part in the same way as other projects under this section." [5309 - capital investment grants].
N/A	FTA	MTA recommends separating the project approval process from the grant approval process, particularly for routine state of good repair projects, such as replacement of rolling stock, facility components and other transit related equipment. We suggest that federal transit funds for these projects be available at the start of the federal fiscal year without publication of a Federal Register notice, provided funds are authorized. For these projects, budget authority, involving detailed FTA review and approval of the grant would not be necessary. A modified grant format could be considered as part of FTA's current initiative to update the TEAM system, and adherence to federal certifications and assurances for	MTA	Funding for SGR projects is normally derived from the 49 U.S.C. 5307 and 5311 formula programs. By law, apportionments for urbanized formula projects must be published in the *Federal Register* before being made available for expenditure. Availability of these funds depends on Congressional appropriations as well as authorizations. Moreover, Congress requires FTA to apportion Section 5307 funds in accordance with statutory formulae and publish apportionments of the amounts available for each

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		these "excluded" items could be addressed through FTA's Triennial Review process. By allowing certain projects to use federal funds immediately, grantees would be able advance projects on a more predictable time frame, and finance costs associated with pre-award authority would be reduced.		area. For that reason, FTA cannot make funding available to grantees absent appropriations or previous funding that may have been recovered.
49 U.S.C. 5316 Guidance	FTA	Car sharing projects have been rejected from being eligible for JARC funds by FTA. Specifically, FTA stated in FRN Vol. 71 September 6, 2006 that "Shared station cars--cars available for shared use and located at subway or other public transit stations--are not listed in the examples of eligible activities. While there may be limited circumstances when the provision of a shared station car might be appropriate to support access to short-term job related activities, such as interviews, FTA does not believe that purchase of shared station cars is generally appropriate to support daily commutes." The model for car sharing provides a dispersed network (not just at a station) of vehicles as an extension of transit in an area. Car sharing is not a commuting option - it exists to help more people commute via public transit, jitneys, car pools, shuttles, etc.... because they can have access to a car share for occasional needs once they have reached their destination.	Community member	FTA agrees that “car sharing is not a commuting option.” The purpose of the JARC program is to provide transportation options for persons with low incomes to get to and from work. It is clear that car share programs are very effective in allowing people to be “car-free” and rely on public transportation for the majority of their trips. Since car sharing is not a viable means of assisting people to get to or from work, however, it is not an eligible expense under the JARC program.
Guidance	FTA	Section Four of Chapter Five of FTA’s Title VI circular outlines the requirement to evaluate service and fare changes. It provides two options for evaluation: Option A (the FTA prescribed method) and Option B (the locally developed method). Option A is the FTA developed method for evaluation. It states that recipients shall assess the effects of a given change in service or fare policy on minority and low-income populations using maps and information available from ridership surveys. Since it is meant to be a prescriptive method, we feel that more guidance is needed on how to establish a viable evaluation process. Additional guidance should include detail on the following: • Type of data needed (i.e. demographic attributes) and typical sources of this	WMATA	FTA is currently in the process of reviewing the Title VI circular for possible revisions.

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		data (census/ customer survey) • Means to define a route or facility as "minority/low income" • Typical measures of impact (i.e. reduction of headway/longer wait time, higher load factor, additional cost per trip for common Old pairs) • A simple example of how to analyze data for a disparate impact • Discussion of how to mitigate impacts • Examples of what constitutes "substantial need" This information would be illustrative in nature and would only pertain to Option A.		
23 CFR part 450	FTA/FHWA	Despite attempts to clarify the intent of new planning regulations dealing with financial constraint, many MPO's are encountering interpretations in various states that suggest that the financial information from project sponsors in the TIP needs to include the exact location of the funding source. This is a requirement that an MPO cannot verify or monitor, but also a requirement that potentially hampers the ability of a local sponsor to respond to financial situations and move funding where necessary. Essentially, funding sources are an issue between the states (who have the funding agreements with local project sponsors) and local government. It would streamline and make more easy the financial constraint reviews if this issue were clarified and simplified.	A Clements	The existing regulations require the proposed funding source be identified in the STIP/TIP. This is a key part of demonstrating fiscal constraint of the STIP/TIP. States and MPOs do have the flexibility to change the proposed funding source administratively in the TIP/STIP without an amendment or update. FHWA/FTA will consider opportunities for developing and issuing clarifying guidance or information in the future.
23 CFR part 450	FTA/FHWA	DOT should require State DOTs and MPOs to improve reporting on transportation funding decisions and outcomes with the stated objective of achieving transparency of and convenient public access to information about the use of federal surface transportation funding. DOT's planning regulations currently require states and MPOs to provide certain information to the public but the lack of a stated purpose or clear expectations leads to inconsistent application of these requirements around the country. This situation can be addressed by using the model set by Administration management and reporting on ARRA (White House Memo M-09-10). Like past ARRA reporting systems, data should be compiled, organized and made available on the Internet through a plain	Reconnecting America	Currently the planning Statute and regulations only require MPOs to publish a list of projects for which funds under Title 23 or Title 49/Chapter 53 were obligated in the preceding program year.

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		English website (Recovery.gov is a good model). Beyond that, a new federal surface transportation performance monitoring and reporting website should have built-in provisions for data access and analysis. A comprehensive glossary should be provided and data reporting from all agencies and grantees should be standardized to support both routine reports and ad hoc investigation. Greater transparency about the use of federal transportation funds will all users of the transportation system to monitor progress and identify inefficient or uncoordinated uses of federal funding.		
23 CFR part 450	FTA/FHWA	DOT should improve consolidated planning process between federally required long-range transportation, housing and environmental plans. Working closely with the U.S. Department of Housing and Urban Development, DOT should issue guidance to State DOTs and MPOs on ways to improve coordination between state and regional long-range transportation plans and federally-required consolidated housing plans. The implementation of HUD's Sustainable Communities grants will be an important opportunity for USDOT to work with selected communities, particularly through DOT regional offices, to identify best practices as well as potential barriers and data needs from MPOs, transit agencies and state DOTs, with an eye towards achieving a more simplified and consolidated planning process. Such a process will reduce inefficiencies a the local and regional level stemming from uncoordinated federal planning requirements.	Reconnecting America	FHWA and FTA have started to work with HUD to better align planning and program activities, for example as part of the TIGER II grants. Through the DOT/HUD/EPA partnership, it is an area we are continuing to explore. It is important to emphasize, however, that because FHWA and FTA do not approve the transportation plans of States and MPOs, the agencies will need to rely upon non-binding guidance for promoting more fully coordinated plans and planning processes.
23 CFR part 450	FTA/FHWA	23 CFR Part 450 requires revenues and costs in MPO long range transportation plans (LRTP), MPO transportation improvement programs (TIP) and the statewide transportation improvement program (STIP be expressed in "year of expenditure dollars." No such requirement is contained in Title 23 USC. Recommendations: The use of either "year of expenditure dollars" or "present day dollars" for both revenues and costs is technically correct and both approaches are widely used	AASHTO	The YOE requirement in the regulation requires State DOT's and MPOs to adjust project costs and revenues to year of expenditure. This is important for the demonstration of fiscal constraint because over the life of the STIP/TIP and MTP, revenues may not be inflating at the same rate as project costs. Also, using YOE dollars provides consistency between project costs in the STIP/TIP and those used in project finance plans. States and MPOs do have the option of developing an analysis using "present

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		in financial analyses. The preferred approach should be a technical decision best made by the MPO in cooperation with the state.		day dollars" in addition to an analysis using YOE dollars for their own use and purposes if they deem it necessary.
23 CFR part 450	FTA/FHWA	Title 23: Part 450 provides policy guidance on how states should administer FHWA Planning and Research Program funds, but is very vague in terms of reporting measures and methods of approval. For example, phrases such as adequate and reasonable are used to describe the requirements for public involvement and planning processes. Consequently, FHWA staff employ subjectivity in interpreting these rules. The main problem associated with this regulation is the subjectivity and inconsistency of its interpretation by federal officials. Instead of requiring FHWA approval of planning programs and documents, e.g., the Public Involvement Plan, Long-Range Plan, the Statewide Transportation Improvement Program and the amendments to them, enable states the ability to self-certify that planning documents and programs are compliant with Title 23. A significant reduction in administrative review processes enabling projects to proceed to design and construction on a much quicker timetable.	Maine DOT	FHWA and FTA do not approve public involvement plans, long-range transportation plans, or transportation improvement programs (TIP) of MPOs. FHWA and FTA do approve the STIP and conformity findings on TIPs and Metropolitan Transportation Plans because it is required by statute. Any change to this requires a change to statute. States and MPOs currently have a requirement to self-certify that their planning programs and documents are compliant with Title 23. FHWA and FTA continue to examine their internal management practices and look for opportunities to achieve better consistency through providing guidance and training.
23 CFR part 450	FTA/FHWA	Statewide planning and metropolitan transportation planning require work programs, records retention, and significant reporting that would allow USDOT to pinpoint the costs and benefits associated with compliance with this part. Many of the statements included in this part can and should be conveyed in non-binding guidance. The regulations should be clear and concise about requirements and exceptions to those requirements. The USDOT should assess whether some of the matters in this section could be better handled by the states without regulations.	CalTrans	This is not desirable - Records retention requirements are consistent with the Common Rule that applies to Federal grant recipients. The requirements are critical to determining proper use of Federal funds and are appropriately required through regulations. Examples of regulations are in Title 49 CFR 18.42 and Title 49 CFR 18.20, which require accurate, current, and complete disclosure of the financial results of financially assisted activities made with grants or sub-grants awarded with DOT funding.

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23 CFR part 450	FTA/FHWA	Streamline the federal Transportation Improvement Program (TIP) Amendment process. Current regulations require that many relatively minor changes to project cost, scope, or schedule require time-consuming and paperwork intensive amendments to the TIP. This can occur as a result of relatively minor changes to project limits (as little as over a tenth of a mile), or changes in project cost (regardless of the amount of change). Relaxing the requirements for amendments will greatly expedite revisions and save resources.	CalTrans	This is desirable - The current regulation provides flexibility to States/MPOs to set criteria for determining whether changes to cost or schedule for projects should be effected as "administrative modifications'" Changes to project design concept and scope, however, require an amendment because of their implications for conformity, public involvement, and fiscal constraint.
23 CFR part 450	FTA/FHWA	Change the period of the TIP/STIP from four years to five. Current regulation requires the TIP/STIP to cover four years and be updated at least every four years (California updates every two years, to have a pool of programmed projects to draw on). If the period of the TIP/STIP were increased to five years, with an update at least every four years, it would cut in half the workload of Metropolitan Planning Organizations and states for updates.	CalTrans	The period covered by the STIP/TIP was established in statute and therefore only Congress can make this change.
23 CFR part 450	FTA/FHWA	A modern, integrated budgeting tool for local and state project sponsors under FHWA would dramatically improve both program oversight and project spendout monitoring. These two tasks (budgeting and spendout monitoring) are currently being accomplished with the TIP/STIP documents and the Fiscal Management Information System (FMIS). The TIP/STIP amendment process is clumsy and not designed to take into account final bids on projects, change orders, and other facts of life in the project implementation world. Meanwhile, project sponsors are unable to easily monitor the relationship between their budgeted projects in the TIP/STIP and their obligated amounts in FMIS. Local project sponsors at a special disadvantage here because of their sub-grantee relationship with state DOTs. A further issue if the requirement for all federal funding changes to be accomplished by amendment to the TIP/STIP. While it is important to disclose these	NYC DOT	Integration of the STIP/TIP with FMIS may be desirable and is the prerogative of the States and MPOs, however, it is not adopted as a requirement due to the complexities and technical capacity that would be involved. The current regulation provides flexibility to States/MPOs to set criteria for determining whether changes to cost and schedule of projects should be effected as "administrative modifications." Mapping is an effective approach to communicating the information associated with projects in the plan and TIP/STIP. However, it is not an administrative requirement due to the wide range of technical capabilities of MPOs and States precludes imposition of a technical standard.

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		changes, the process of amending the TIP during project bidding and implementation can cause confusion and undue burden on agencies. Further, the use of the TIP to in effect monitor the budget for transportation projects on a regional basis is typically a clumsy operation because of the multiple agencies involved. We recommend that the TIP/STIP be made more easily amendable if it is to be used continually as a budgeting document for federal funding. Finally, to maximize transparency, all projects in the federal program should be mapped in an accessible way for the public and for partner agencies through FMIS.		
23 CFR 450.210	FTA/FHWA	Public Meetings – the regulations state that “to the maximum extent practicable ensure that public meetings are held at convenient and accessible locations and times” – holding traditional public meetings for planning has been relatively ineffective as a means for obtaining public involvement or comment. A later section of the regulations encourages use of electronic means for providing public information, but the requirement for public meetings still stands. This is outdated for most areas and should be done at the discretion of the DOT or MPO and the approaches to be used should be documented in the DOT or MPO public involvement plan but not dictated at the Federal level.	Colorado DOT	In the event that a public meeting is held, the DOT or MPO must, by statute and regulation: “to the maximum extent practicable ensure that public meetings are held at convenient and accessible locations and times”.
23 CFR 450.210	FTA/FHWA	The regulations state that “to the maximum extent practicable ensure that public meetings are held at convenient and accessible locations and times” – holding traditional public meetings for planning has been relatively ineffective as a means for obtaining public involvement or comment. A later section of the regulations encourages use of electronic means for providing public information, but the requirement for public meetings still stands. This is outdated for most areas and should be done at the discretion of the DOT or MPO and the approaches to be used should be documented in the DOT or MPO public involvement plan but not dictated at the Federal level.	AASHTO	In the event that a public meeting is held, the DOT or MPO must, by statute and regulation: “to the maximum extent practicable ensure that public meetings are held at convenient and accessible locations and times”.

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23 CFR 450.212	FTA/FHWA	Transportation Planning Studies & Project Development and 450 Appendix A - Linking the Transportation Planning & NEPA Process Maintain flexibility and do not mandate this optional project streamlining process. We are not suggesting this as a CFR to be reviewed. However, if selected based on input from others, do not incorporate Appendix A into the regulation, maintain it as an appendix. This process is useful because it is optional, not mandated, allowing states flexibility to customize the approach to what makes sense given each particular study. In addition, under 23 CFR 450.212, preserve the ability to use products from the planning process in the environmental process to avoid -duplication of efforts and unnecessary, excess costs.		Appendix A to the planning regulations is non-binding and is guidance, not a requirement.
23 CFR 450.216	FTA/FHWA	23 CFR 450.216 STIP (as it relates to fiscal constraint) Issue. Costly, disruptive to project delivery, burdensome. Current federal fiscal constraint and environmental restrictions make it difficult to strategically identify and preserve future transportation corridors. Until the NEPA process is complete and a corridor is in a fiscally constrained plan, federal funds can only be used to acquire individual parcels that meet the definition of "hardship" or "protective" acquisitions. These exceptions are narrow making it difficult to protect a continuous corridor or strategically acquire parcels from willing sellers until after the NEPA process is completed. We support AASHTO's recommendations to separate the right-of-way acquisition process from the environmental impact process and treat right-of-way acquisition as a "neutral" event from an environmental point of view. Allow states to use federal or state funds well in advance of project construction if the opportunity is there and the viability of a project would otherwise be threatened. Specify that entire corridors do not need to be part of a fiscally constrained. Long-Range Transportation Plan in order for corridor preservation to advance. This could generate overall project cost savings and reduce significant disruption down the road to project delivery.	Montana DOT	Current statute allows the STIP (program) to contain a project or an identified phase of a project only if full funding can be reasonably anticipated to be available for the project within the time period contemplated for completion of the project. (SAFETEA-LU § 6001, 23 U.S.C. § 135 (g)(4)(E). While FHWA and FTA regulations presently limit the ability to use Federal funds for acquisition of property prior to the completion of NEPA, the primary standard appears in CEQ regulation at 40 CFR § 1506.1. That is a government-wide regulation and U.S. DOT agencies have no authority to revise it.

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23 CFR 450.216	FTA/FHWA	Development and content of the statewide transportation improvement program (STIP). "(a] The STIP shall cover a period of no less than four years and be updated at least every four years, or more frequently if the Governor elects a more frequent update schedule." Due to the importance of keeping programming information up-to-date, it is recommended that the update period for the STIP be at least every two years, or more frequently if the Governor elects a more frequent update schedule. Updating the STIP every two years maintains a programming document that always shows planned obligations at least two years into the future. This is preferable to allowing the programming document to get down to showing only the current year's planned obligations.	Hampton Roads Transportation Planning Organization	States and MPOs are required update the STIP/TIP at least once every 4-years. They may update the STIP/TIP more frequently if necessary. Any change to the 4-year minimum STIP/TIP cycle in regulation would require a change in statute.
23 CFR 450.216	FTA/FHWA	Development and content of the statewide transportation improvement program (STIP). "(b) For each metropolitan area in the State, the STIP shall be developed in cooperation with the MPO designated for the metropolitan area." Recommend adding something to the effect of "the STIP development schedule shall take into account the metropolitan planning organization (MPO) processes for TIP development, including review of the draft TIP project list, public involvement, and meeting schedules of the technical and policy boards." Since the MPO TIPs shall be included without change in the STIP [450.216 [b]], and since there can be repercussions if a MPO TIP is not ready in time to be included in the STIP (450.218 (c)), it is important that the cooperation between the State and the MPOs during STIP development take into account the time necessary to develop the MPO TIP.	Hampton Roads Transportation Planning Organization	This is not desirable - The current regulation calls for "…the cycle for updating the TIP must be compatible with the STIP development and approval process." This is appropriate because a State may have multiple MPO TIPs that might be on different timeframes, while there is only one STIP.
23 CFR 450.216	FTA/FHWA	Development and content of the statewide transportation improvement program (STIP). "(l] The STIP may include a financial plan that demonstrates how the approved STIP can be implemented..."	Hampton Roads Transportation Planning Organization23	This is a useful suggestion, however, to change the regulations it would require a change in statute. Current statute states that the STIP "may include a financial plan."

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		Since the STIP is required to be fiscally constrained, it is recommended that this statement be revised to read the STIP shall include a financial plan.	CFR 450.216	
23 CFR 450.206, 450.306, 450.214, 450.222, 450.336	FTA/FHWA	Issue: Maintain flexibility and progress made in streamlining. We are not suggesting these CFR's as candidates for review, but if they are selected, we strongly encourage retaining the flexibility and important streamlining provisions already contained in these regulations including: 1. Continue planning factor provision as a "consideration" rather than a "mandate" and do not expand the already comprehensive list of planning factors; 2. continue to allow the option of a policy-based statewide long-range transportation plan, rather than project specific; and 3. continue to exempt the planning process from NEPA. Since the passage of ISTEA in 1991, major efforts to streamline the planning process have been accomplished incrementally with each subsequent authorization act. The regulatory review process should not circumvent the progress made to date and in fact should consider further streamlining efforts.	Montana DOT	This commenter does not request any changes
23 CFR 450.324	FTA/FHWA	Development and content of the transportation improvement program (TIP). "(a) The TIP shall cover a period of no less than four years, be updated at least every four years, and be approved by the MPO and the Governor." Due to the importance of keeping programming information up-to-date, it is recommended that the update period for the TIP be at least every two years. Updating the TIP every two years maintains a programming document that always shows planned obligations at least two years into the future. This is preferable to allowing the programming document to get down to showing only the current year's planned obligations. (This change would need to be made in concert with a change to 450.216 (a] regarding the	Hampton Roads Transportation Planning Organization	States and MPOs are required update the STIP/TIP at least once every 4-years. They may update the STIP/TIP more frequently if necessary. Any change to the 4-year minimum STIP/TIP cycle in regulation would require a change in statute.

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		update schedule for the STIP.)		
23 CFR part 450, Appendix A	FTA/FHWA	A long-standing dilemma for transportation agencies is the tendency for decisions made in the planning process to be re-opened in the NEPA process – in essence, starting over – rather than using the planning decisions as the starting point for the NEPA review. Although some progress was made in SAFETEA LU and FHWA regulations, there remains a deeply engrained reluctance to adopt the mode and corridor decisions from the planning process as the basis for the Purpose and Need in NEPA documents. FHWA should establish a presumption that decisions made in the planning process on corridor, facility type, and mode will be adopted in the NEPA process.	AASHTO	This is an interesting recommendation; FHWA/FTA might explore how this might work and whether it could be adopted without statutory authority. Currently, Appendix A of the planning regulation provides guidance on the use of planning information to inform the NEPA process. It is non-binding and at the discretion of the parties responsible for NEPA review as to the extent and appropriateness of previous planning information that is used to inform NEPA versus the development of new information in NEPA.
23 CFR part 450, subparts B and C	FTA/FHWA	Planning regulations for MPO's and for Statewide planning – the planning regulations for MPO's are distinct and different than those for statewide planning yet the expected end product is a consolidated transportation plan that covers the whole state. The disparate requirements and timelines create confusion and difficulties in delivering for the public an understandable vision and implementation plan for transportation in the State. It is possible to have mis-matched or even conflicting goals and priorities even though there is a regulation calling for cooperative and collaborative planning to occur.	Colorado DOT	Provisions in SAFETEA-LU that call for different planning processes for MPOs vs. States have been identified in discussions with stakeholders associated with reauthorization. With enactment of new Surface Transportation Program Authorization expected in the relatively near future, it is very likely that a new rulemaking process will be undertaken to reflect new statutory requirements and authorities, replacing the current rule. This will certainly include attention to the alignment of metropolitan and statewide transportation planning, which can be fully vetted with all stakeholders and the public during that process.
23 CFR part 450, subpart C	FTA/FHWA	The requirement for projects to be listed in the long range plan for MPO areas, particularly those in non-attainment for the clean air act, creates a "pipeline" of projects with strong political expectations for over a 20 year horizon. Changing emphasis areas or funding types or policy priorities are not easily addressed due to the resistance to deviate from that list once it is established.	Colorado DOT	The requirement for Statewide and Metropolitan Transportation plans to cover a 20-year horizon is in Statute. Any changes to regulations would require a change in statute. However, the State DOT's and the MPO's have the option of amending their plans at any time.
23 CFR part 450, subpart C	FTA/FHWA	The regulations require that "all regionally significant projects requiring an action by FHWA or FTA" be included in the TIP/STIP. The regulations also state that " the STIP shall include for project or phase (e.g. environmental/NEPA…)" descriptive material, cost, etc..	AASHTO	The basis for requiring a subsequent phase of a project in a STIP/TIP prior to final NEPA approval is that in order for FHWA to make a decision under NEPA, there must be a proposed action that requires FHWA approval.

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		Since one of the phases is environmental /NEPA the culmination of that phase with a ROD or FONSI signature should be done if the cost for that phase was included in the STIP. A memo written by FHWA states that a ROD or FONSI cannot be signed unless *the next phase* of the project is listed in the TIP/STIP with funds identified *in addition to being listed in the fiscally constrained plan*. This seems to require that at least 2 phases be included in the TIP/STIP. This is an interpretation of the regulations that has created hardship for DOT's trying to advance projects with very constrained funding streams where the project may have to be implemented in phases over a long period of time. Provide new guidance on the interpretation of signing of ROD or FONSI without having additional project phases included in the TIP/STIP.		
23 CFR part 450, subpart C	FTA/FHWA	Signing of ROD or FONSI and TIP/STIP – the regulations require that "all regionally significant projects requiring an action by FHWA or FTA" be included in the TIP/STIP. The regulations also state that " the STIP shall include for project or phase (e.g. environmental/NEPA…)" descriptive material, cost, etc.. Since one of the phases is environmental /NEPA the culmination of that phase with a ROD or FONSI signature should be done if the cost for that phase was included in the STIP. A memo written by FHWA states that a ROD of FONSI cannot be signed unless *the next phase* of the project is listed in the TIP/STIP with funds identified *in addition to being listed in the fiscally constrained plan*. This seems to require that at least 2 phases be included in the TIP/STIP. This is an interpretation of the regulations that has created hardship for DOT's trying to advance projects with very constrained funding streams where the project may have to be implemented in phases over a long period of time	Colorado DOT	The basis for requiring a subsequent phase of a project in a STIP/TIP prior to final NEPA approval is that in order for FHWA to make a decision under NEPA, there must be a proposed action that requires FHWA approval.
23 CFR part 450, subparts B and C	FTA/FHWA	Integrating Long Range Plans – the regulations require that many areas be addressed in the Statewide long range plan including safety, transit, rail, security, aviation, freight, and bike/ped. Varying guidelines from FHWA, FTA and FRA set the framework for these separate documents resulting in a fragmented approach	Colorado DOT	The framework for these documents is based on current statute and the regulations are consistent with the statute.

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		that creates silos instead of integration. The regulations could be re-structured to reflect a "one DOT" and a more comprehensive approach to transportation planning.		
N/A	FTA/FHWA	Projects funded under both FTA and FHWA programs must be reflected in states' STIPs. The two modal administrations have very different processes, terminology, timelines, and in some cases, preferences for how projects are represented in STIPs. This requires states to spend extra time weeding through two different and distinct sets of requirements. This is particularly problematic with the requirements that revolve around financial and information systems and we are often forced to hand enter project data and to specially manipulate data to wedge FTA projects into STIPs. The same planning laws apply to both highway and transit projects yet requirements associated with them vary by modal administration. Processes, timelines, information systems, and other process-related requirements imposed by all modal administrations should be the same. Consistency in the requirements of all federal modal administrations will save MPOs and state DOT considerable time and reduce costs.	AASHTO	More information on the specifics of what is at issue would be helpful. It is possible the concerns, once fully understood, could be addressed by administrative action. FHWA and FTA have joint statutory and regulatory requirements and timelines for how projects are represented in the STIP/TIP. Projects are entered into the STIP/TIP prior to obligation of funds and entry of project information into financial and information systems.
23 U.S.C. 134/135	FTA/FHWA	The TIP/STIP amendment/modification process is excessively lengthy and creates voluminous paperwork even when making only a minor change for project costs or funding sources. Furthermore, TIP information tends to be at least a year old by the time the federal reviewer approves each individual project. Eliminate the modification process for projects where the cost changes or funding source changes are minor. For example, allow cost/funding source changes within 20% of the TIP/STIP-approved project cost, without triggering the TIP/STIP amendment/modification process.	AASHTO	This is desirable - The current regulation provides flexibility to States/MPOs to set criteria for determining whether changes to cost or schedule for projects should be effected as "administrative modifications."
46 CFR Part 390 and 46 CFR Part 391	MARAD	Commenter requests that MARAD enable a Capital Construction Fund to be used for capital lease payments. Some of the committee reports that accompanied the Tax Reform Act of 1986, expressed the view that withdrawals from Capital Construction Funds (CCF)	Horizon Lines, Inc., and Masters, Mates, & Pilots	The current statutory language does not allow for funding leases. Under 46 U.S.C. § 53510, the tax basis of the acquired asset must be reduced by the amount of the withdrawal. Leases, even if capitalized under generally accepted accounting principles, do not have a tax basis. Lease

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		could be used for the lease of an agreement vessel if the lease period was five years or more. However, the Tax Reform Act of 1986 did not amend the statute to allow for leases to be funded by CCF withdrawals. Under the current statute, CCF withdrawals may be used for: “(1) the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a qualified vessel; or (2) the payment of the principal on indebtedness incurred in the acquisition, construction, or reconstruction of a qualified vessels or a barge or container that is part of the complement of a qualified vessel.” Horizon seeks to have the term, “acquisition,” include acquisition through a capital lease.		payments are a business expense, not payment of principal. A CCF helps out in a vessel lease situation by being available to the vessel owner. Thus, the CCF can operate to provide tax savings to the vessel owner that can result in lower lease payments by the lessee.
46 CFR § 298.13(i)	MARAD	Commenter seeks increased flexibility under the Title XI loan guarantee program for MARAD to consider worthy applications. MARAD may waive this requirement of 46 CFR § 298.13(i), which requires an applicant to have long term debt no greater than twice its equity, if there is “adequate security.” Horizon urges MARAD to modify its rules to make clear that it has the flexibility to consider applications from freight operators with an established record of revenue generation, even if such applications would not meet either the 2-1 debt/equity test or the current “security” waiver test.	Horizon Lines, Inc.	Horizon’s request to forego “adequate security” is unreasonable, as 46 U.S.C. § 53711(a) requires the applicant to convey a security interest “the Secretary or Administrator considers necessary to protect the interest of the United States Government.”
49 CFR 571.110 49 CFR 571.120	NHTSA	Suggests that NHTSA delete the requirements for relabeling a vehicle if a vehicle modifier adds more than the lesser of 100 lb or 1.5% of a vehicle’s GVWR.	NADA Docket No. OST-2011-0025-0085.2	NHTSA recently completed rulemaking on this issue by publishing a Final Rule, Response to petitions for reconsideration in April 2010. NHTSA denied petitions on this specific issue because of the safety concerns about vehicle overloading, which could lead to tire failures and subsequent vehicle loss-of-control.
49 CFR Part 26, DBE	OST	DBE requirements should be made more consistent with transportation construction industry practices.	ARTBA	Normal transportation construction industry practices can create barriers to DBE firms’ ability to compete on a level playing field. The DBE rule intentionally creates some differences in order to mitigate barriers.
49 CFR Part 26, DBE	OST	Contrary to the present rule, DBE subcontractors and prime contractors should be able to count credit for items	ARTBA	This issue has been considered extensively in public meetings, an ANPRM, NPRM, and final

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		purchased by the subcontractor from its prime contractor.		rule, with the explicit decision of S-1/S-2 being to leave the current rule as is. This item should not be considered further at this time.
49 CFR Part 26, DBE	OST	Prime contractors should be able to assist DBEs in building capacity without being discouraged from doing so by the rule.	ARTBA	The comment does not specify what regulatory changes are desired. The comment may refer to requirements that DBE firms be independent, central to maintaining program integrity. Independence requirements should not be weakened.
49 CFR Part 26, DBE	OST	Permit dual MBE/WBE goals when needed to address discrimination, on a contract-by-contract basis.	Illinois DOT	IDOT tried to get a waiver to permit dual goals on a recent mega-project, and was denied because it did not make a strong enough case. The rule already permits waivers with respect to goals, and a number have been granted when sufficient evidence was presented. No regulatory change is needed on this point.
49 CFR Part 26, DBE	OST	Allow states to count toward overall goal attainment DBE participation on contracts that do not have Federal funding.	Illinois DOT	Because the DBE rule applies only to Federally-funded contracts, this idea does not appear feasible.
49 CFR Part 26, DBE	OST	Permit monetary incentives for meeting DBE contract goals or penalties for failing to do so.	Illinois DOT	This idea is infeasible because it raises narrow tailoring issues under constitutional standards applying to affirmative action programs.
49 CFR Part 26, DBE	OST	Modify size standards for suppliers (e.g., of fuel oil) to account for increases in commodity process, which artificially increase gross receipts. Use SBA standards.	Deborah Stange, West Fuels Inc.	By statute, we must use SBA standards, and we are also subject to a statutory gross receipts cap.
49 CFR Part 26, DBE	OST	There should be time limits for DOT response to waiver requests.	Colorado DOT	While DOT responses have taken too long in some instances, it is doubtful that a specific response time frame in the rule would be meaningful.
49 CFR Part 26, DBE	OST	It will be more burdensome for contractors to make good faith efforts once the interstate certification provision goes into effect, since they would have to contact more out-of-state firms.	Colorado DOT	Because interstate certification provision does not go into effect until next year, this is speculative at this point. It is likely that any additional workload for contractors will not be overwhelming, and in any case would serve program objectives.
49 CFR Part 26, DBE	OST	Believes operating administration DBE requirements conflict with each other and with state and local DBE requirements. Want local agencies to be able to use any OA-	American Public Works Association	Issue arises in rare cases (e.g., Jacksonville, FL) where same local agency runs transit system and builds roads. FTA and FHWA may have approved different goals for the projects they fund. While this situation can be frustrating for

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE
		approved DBE program and goals for the local agency, provided the local agency elects to do so by advising the granting agency of its election in writing.		the local agency, the local transit goal may well not be appropriate to use for highway projects to which a statewide goal applies, because of differences in the markets for the two types of projects.
49 CFR Part 26, DBE	OST	Go back to goal/requirements program, which would be easier and cheaper to administer than current program	aclements - Ideascale	Not feasible because of constitutional requirements for program
49 CFR Part 26, DBE	OST	DBE standards do not harmonize with stage registries and net worth requirements are not realistic in some industries	Community member - Ideascale	PNW has recently been reviewed and adjusted. Not appropriate to change DOT certification standards because states might have different criteria for non-Federally funded programs.
Americans with Disabilities Act (ADA) rule, 49 CFR Part 37.	OST/C	Wants pre-rulemaking consultation, industry working groups etc. on ADA matters	SEPTA	Industry has always had ample input into ADA rulemaking issues. While there can appropriately be stakeholder consultations on issues (e.g., as the Department has done with respect to the DBE rule), there should not be any requirement for industry vetting before proposals are offered for public comment.
49 CFR Part 40; 49 CFR Part 382 Drug Testing	OST/ODAPC and C; FMCSA	Currently, large employers have to send blind specimens to testing laboratories to check on accuracy of testing process. ATA believes that laboratories or a "standards monitoring body" should do this instead of trucking companies.	American Trucking Associations (ATA)	Part of the value of blind specimens is that they come from the same sources – employers – that send in real employee specimens. This makes the blind specimen a real test of not only the laboratory's equipment but also the documentation of the specimen from the collection site. A laboratory sending a blind specimen to itself would not achieve this objective as well. There are no "standards monitoring bodies" to perform this function. In addition, as ATA points out, few employers have to send these specimens, and given the size of the companies involved and the small number of specimens that must be sent, the burden is small.
49 CFR 192.1009, 192-271-287, Form 7100.1-2, LNG, Compression Fittings	PHMSA (OPS)	PHMSA should reconsider actions that were taken in a recent final rule involving Mechanical Fittings.	Norton McMurray Manufacturing Company	The rulemaking actions regarding mechanical fittings, including the new Mechanical Fitting Failure Report, were finalized on February 1, 2011. This rulemaking was part of an extensive public process that provided the affected entities with multiple opportunities to comment. NORMAC's comments to the proposal and the information collection portion were addressed in

REGULATION	OPERATING ADMIN./ OST OFFICE	COMMENT (JUSTIFICATION FOR REVIEW)	COMMENTER	RESPONSE
				the associated federal register publications. In addition, each person has the opportunity to appeal a final rule within 30 days of publication. No appeals were received in regard to this final rule. PHMSA does not believe that enough time has elapsed to justify any changes to the recently adopted reporting requirements for mechanical fittings.
N/A	PHMSA (OPS)	AOPL and API urge the DOT to develop with EPA either a new Memorandum of Understanding or a letter agreement addressing this issue as soon as possible, to reduce the confusion surrounding dual regulatory jurisdiction over pipeline facilities and to harmonize two separate regulatory schemes, ultimately streamlining the inspection process for operators of these breakout tanks.	Association of Oil Pipe Lines/American Petroleum Institute	PHMSA continues to work with EPA and the US Coast Guard on a variety of issues, including ways to improve communication and planning; while we do not have clear evidence of any significant problems created by the status quo, both EPA and DOT continuously seek to improve our coordination in carrying out our statutorily mandated missions.

New Jersey Avenue SE., Washington, DC 20590.

Federal Railroad Administration (FRA)

Michelle Silva, Docket Clerk, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W31-109, Washington, DC 20590; telephone (202) 493-6030.

National Highway Traffic Safety Administration (NHTSA)

(Name of contact person), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

Federal Transit Administration (FTA)

(Name of contact person), Federal Transit Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

Saint Lawrence Seaway Development Corporation (SLSDC)

(Name of contact person), Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE., Washington, DC 20590.

Pipeline and Hazardous Materials Safety Administration (PHMSA)

(Name of contact person), Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue SE., Washington, DC 20590.

Maritime Administration (MARAD)

Kimberly Lewis, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-5158.

The Research and Innovative Technology Administration (RITA)

(Name of contact person), The Research and Innovative Technology Administration (RITA),1200 New Jersey Avenue SE., Washington, DC 20590.

Federal Aviation Administration (FAA)

To obtain a copy of a specific Federal Aviation Administration (FAA) regulatory document in the agenda, you should communicate directly with the contact person listed with the regulation at the address or telephone number listed; access the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies/; call (202) 267-9680; or write to us at Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591.

Office of the Secretary (OST)

To obtain a copy of a specific regulatory document or to receive future copies of the Department's regulatory agenda write to: Assistant General Counsel for Regulation and Enforcement, C-50, Office of the General Counsel, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366-4723.

Appendix B—General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

FAA - Rebecca MacPherson, Office of Chief Counsel, Regulations and Enforcement Division, 800 Independence Avenue SW., Room 915A, Washington, DC 20591; telephone (202) 267-3073.

FHWA - Jennifer Outhouse, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-0761.

FMCSA - Theresa M. Rowlett, Regulatory Ombudsman, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-0596.

NHTSA - Steve Wood, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-2992.

FRA - Kathryn Shelton, Office of Chief Counsel, 1200 New Jersey Avenue SE., Room W31-214, Washington, DC 20590; telephone (202) 493-6063.

FTA - Linda Lasley, Office of Chief Counsel, 1200 New Jersey Avenue SE., Room E56-202, Washington, DC 20590; telephone (202) 366-4063.

SLSDC - Carrie Mann Lavigne, Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-0091.

PHMSA - Patricia Burke, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-4400.

MARAD - Christine Gurland, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-5157.

RITA - Robert Monniere, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-5498.

OST - Neil Eisner, Office of Regulation and Enforcement, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-4723.

Appendix C—Public Rulemaking Dockets

All comments via the Internet are submitted through the Federal Docket Management System (FDMS) at the following address: http://www.regulations.gov. The FDMS allows the public to search, view, download, and comment on all Federal agency rulemaking documents in one central online system. The above referenced Internet address also allows the public to sign up to receive notification when certain documents are placed in the dockets.

The public also may review regulatory dockets at, or deliver comments on proposed rulemakings to, the Dockets Office at 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, 1-800-647-5527. Working Hours: 9-5.

Appendix D—Review Plans for Section 610 and Other Requirements

Part I - The Plan

General

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our 1979 Regulatory Policies and Procedures require such reviews. We also have responsibilities under Executive Order 12866 "Regulatory Planning and Review" and section 610 of the Regulatory Flexibility Act to conduct such reviews. This includes the use of plain language techniques in new rules and considering its use in existing rules when we have the opportunity and resources permit its use. The Department initiated a 10-year review plan. We will begin a new 10-year review cycle with the fall 2008 agenda. We are committed to continuing our reviews of existing rules and, if needed, will initiate rulemaking actions based on these reviews.

Section 610 Review Plan

Section 610 requires that we conduct reviews of rules that (1) have been published within the last 10 years and (2) have a "significant economic impact on a substantial number of small entities" (SEIOSNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that

we will review during the next year. The Office of the Secretary and each of the Department's Operating Administrations have a 10-year review plan. These reviews comply with section 610 of the Regulatory Flexibility Act.

Other Review Plan(s)

All elements of the Department, except for the Federal Aviation Administration (FAA), have also elected to use this 10-year plan process to comply with the review requirements of the Department's Regulatory Policies and Procedures and Executive Order 12866. FAA is using a different approach, which is described in part II to this appendix.

Changes to the Review Plan

Some reviews may be conducted earlier than scheduled. For example, to the extent resources permit, the plain language reviews will be conducted more quickly. Other events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a Presidentially mandated review. If there is any change to the review plan, we will note the change in the following agenda. For any section 610 review, we will provide the required notice prior to the review.

Part II - The Review Process

The Analysis

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the fall-to-fall schedule for publication of the agenda. Thus, Year 1 (2008) begins in the fall of 2008 and ends in the fall of 2009; Year 2 (2009) begins in the fall of 2009 and ends in the fall of 2010; and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have? Any comments concerning the plan or particular analyses should be submitted to the regulatory contacts listed in Appendix B, General Rulemaking Contact Persons.

Section 610 Review

The Agency will analyze each of the rules in a given year's group to determine whether any rule has a SEIOSNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability. Publication of agencies' section 610 analyses listed each fall in this agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to us early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each fall agenda, the agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on SEIOSNOSE, we will give a short explanation (e.g., "these rules only establish petition processes that have no cost impact" or "these rules do not apply to any small entities"). For parts, subparts, or other discrete sections of rules that do have a SEIOSNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, we will add an entry to the Agenda in the prerulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

Other Reviews

The Agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each fall agenda, the Agency will also publish information on the results of the examinations completed during the previous year.

Part III - List of Pending Section 610 Reviews

The Agenda identifies the pending DOT Section 610 Reviews by inserting (Section 610 Review) after the title for the specific entry. Also, a Governmentwide list of section 610 reviews can be located through an online search at www.reginfo.gov. For further information on the pending reviews, see the agenda entries.

OFFICE OF THE SECRETARY
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 91 through 99 and 14 CFR parts 200 through 212	2008	2009
2	48 CFR parts 1201 through 1253, and new parts and subparts	2009	2010
3	14 CFR parts 213 through 232	2010	2011
4	14 CFR parts 234 through 254	2011	2012
5	14 CFR parts 255 through 298 and 49 CFR part 40	2012	2013
6	14 CFR parts 300 through 373	2013	2014
7	14 CFR parts 374 through 398	2014	2015
8	14 CFR part 399 and 49 CFR parts 1 through 11	2015	2016
9	49 CFR parts 17 through 28	2016	2017
10	49 CFR parts 29 through 39 and parts 41 through 89	2017	2018

Year 1 (fall 2008) List of rules that will be analyzed during the next year

49 CFR part 91 - International Air Transportation Fair Competitive Practices
49 CFR part 92 - Recovering Debts to the United States by Salary Offset
49 CFR part 93 - Aircraft Allocation

49 CFR part 95 - Advisory Committees
49 CFR part 98 - Enforcement of Restrictions on Post-Employment Activities
49 CFR part 99 - Employee Responsibilities and Conduct
14 CFR part 200 - Definitions and Instructions
14 CFR part 201 - Air carrier authority under subtitle VII of title 49 of The United States Code—[Amended]
14 CFR part 203 - Waiver of Warsaw Convention liability limits and defenses
14 CFR part 204 - Data to support fitness determinations
14 CFR part 205 - Aircraft accident liability insurance
14 CFR part 206 - Certificates of public convenience and necessity: Special authorizations and exemptions
14 CFR part 207 - Charter trips by U.S. scheduled air carriers
14 CFR part 208 - Charter trips by U.S. charter air carriers
14 CFR part 211 - Applications for permits to foreign air carriers
14 CFR part 212 - Charter rules for U.S. and foreign direct air carriers

FEDERAL AVIATION ADMINISTRATION SECTION 610 REVIEW PLAN

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	14 CFR parts 119 through 129 and parts 150 through 156	2008	2009
2	14 CFR parts 133 through 139 and parts 157 through 169	2009	2010
3	14 CFR parts 141 through 147 and parts 170 through 187	2010	2011
4	14 CFR parts 189 through 198 and parts 1 through 16	2011	2012
5	14 CFR parts 17 through 33	2012	2013
6	14 CFR parts 34 through 39 and parts 400 through 405	2013	2014
7	14 CFR parts 43 through 49 and parts 406 through 415	2014	2015
8	14 CFR parts 60 through 77	2015	2016
9	14 CFR parts 91 through 105	2016	2017
10	14 CFR parts 417 through 460	2017	2018

The FAA has elected to use the two-step, 2-year process used by most DOT modes in past plans. As such, the FAA has divided its rules into 10 groups as displayed in the table above. During the first year (the "analysis year"), all rules published during the previous 10 years within a 10 percent block of the regulations will be analyzed to identify those with a SEIOSNOSE. During the second year (the "review year"), each rule identified in the analysis year as having a SEIONOSE will be reviewed in accordance with Section 610 (b) to determine if it should be continued without change or changed to minimize impact on small entities. Results of those reviews will be published in the DOT semiannual regulatory agenda.

Tri-Annual Review Plan

The FAA, in addition to reviewing its rules in accordance with the Section 610 Review Plan, has established a Tri-annual process to comply with the review requirements of the Department's Regulatory Policies and Procedures, Executive Order 12866, and Plain Language Review Plan. Our latest review notice was published November 15, 2007 (72 FR 64170). In that notice we requested comments from the public to identify those regulations currently in effect that we should amend, remove, or simplify. We also requested the public provide any specific suggestions where rules could be developed as performance-based rather than prescriptive, and any specific plain-language that might be used, and provide suggested language on how those rules should be written. The FAA will review the issues addressed by the commenters against its regulatory agenda and rulemaking program efforts and adjust its regulatory priorities consistent with its statutory responsibilities. At the end of this process, the FAA will publish a summary and general disposition of comments and indicate, where appropriate, how we will adjust our regulatory priorities.

Year 10 (fall 2007) List of rules analyzed and summary of the results

14 CFR part 91 - General Operating and Flight Rules

- Section 610: The agency has conducted a 610 Review for this part and found three Amendments with SEIOSNOSE.

Amendment No. 91-203

- Amendment No. 91-203, pursuant to two legislative mandates, established requirements for an aircraft to have an operating transponder (basic transponder or Mode S transponder) with automatic altitude reporting equipment (Mode C transponder) when operating in the vicinity of certain primary airports for which a terminal radar approach control service area had been established, and in other airspace at and above 10,000 feet mean sea level. The Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223, December 30, 1987) required the FAA to issue regulations requiring the use of a transponder with Mode C capability in terminal airspace above a minimum altitude to be determined by the FAA. These revisions were intended to reduce the potential for midair collisions between aircraft under the control of air traffic control (ATC) and those that chose to operate without ATC assistance.

DOT

Original FAA finding: Initially, the FAA found that this amendment would not have a SEIOSNOSE. However, during the NPRM phase of this rulemaking, the FAA received numerous comments suggesting that the proposed rules would significantly impact small businesses. The FAA received many comments from private airports, state aviation organizations, and private trade associations that indicated there would be a significant economic impact to private and public airports, as well as fixed based operators at those airports. Comments from businesses engaged in aerial agriculture and pest control, as well as aerial advertising, indicated that the proposed rules would have significant economic impact on these businesses also. Therefore, the FAA reconsidered its finding and agreed that the comments indicated that there would be a SEIOSNOSE.

To mitigate the impact on small entities, the FAA considered three alternative approaches to this rulemaking: (1) Delay implementation for a longer period; (2) establish different standards for small entities; and (3) design the airspace to minimize the impact. The FAA rejected the second and third approaches because it found them to be contrary to the legislative mandates, inequitable, and would result in a diminished safety benefit. The FAA recognized the economic benefit in delaying the implementation of this amendment for a longer period of time to allow for an increase in the supply of the required avionics that should lower the cost of this equipment. However, the FAA stated that the safety need was so great that it was necessary to move forward with the regulations. Therefore, instead of completely delaying the implementation date, the FAA implemented the regulations in two phases over a period of 18 months.

Finding of this 5 U.S.C. section 610 analysis and review: Although the FAA attempted to mitigate the economic impact on small entities by delaying the implementation period, compliance with the amendment still imposes a SEIOSNOSE. Therefore, based on this periodic analysis of the current impact of amendment No. 91-203 on small entities, there continues to be a SEIOSNOSE. No changes are needed because these regulations are mandated by statute and impose the least burden.

Amendment No. 91-263

Amendment No. 91-263 required that certain airplanes be equipped with an FAA-approved terrain awareness and warning system (TAWS) (also referred to as an enhanced ground proximity warning system). It is an operating rule that affects all U.S.-registered turbine-powered airplanes with six or more passenger seats (exclusive of pilot and copilot seating). The rule promotes safety by increasing the warning times and situational awareness of flight crews to decrease the risk of controlled flight into terrain accidents.

Original FAA finding: The FAA determined that this amendment would have a SEIOSNOSE. The FAA noted that the types of entities potentially affected by this rule would include manufacturers of transport category airplanes, manufacturers of ground proximity warning equipment, scheduled air carriers, and nonscheduled air carriers. The small entities that operate under part 91 that were expected to be impacted by this rule would include corporate, business, personal, instruction, aerial application, and local governments. The FAA estimated that the fleet of aircraft to which the rule would apply would be approximately 6,000 turbojets and 6,000 turboprops. The small entities associated with this size fleet constituted a substantial number and the cost impact was considered to be potentially significant. Therefore, the FAA took measures to mitigate the economic impact on small entities.

The FAA made efforts to reduce the impact on these potentially affected small entities by requiring a substantially less expensive and easier to install TAWS for part 91 operators. The FAA determined that there are two classes of TAWS equipment that can provide the desired level of safety: Class A, which includes a terrain situational awareness display, and Class B, which includes only the basic TAWS safety features. The FAA allowed part 91 operators to achieve the desired safety levels by installing the less expensive Class B TAWS equipment. This approach significantly reduced the cost of compliance to small entities, and still met the rule's safety goals.

Finding of this 5 U.S.C. section 610 analysis and review: Although the FAA attempted to reduce the impact on the potentially affected small entities by requiring a substantially less expensive and easier to install TAWS for part 91 operators, compliance with the amendment still imposes a SEIOSNOSE. Therefore, based on this periodic analysis of the current impact of amendment No. 91-263 on small entities, there continues to be a SEIOSNOSE. The benefits justify their costs and the regulations impose the least burden while still meeting the rule's safety goals.

Amendment No. 91-276 (Reduced Vertical Separation Minimum in Domestic United States Airspace)

Amendment No. 91-276, Reduced Vertical Separation Minimum in Domestic United States Airspace, expanded Reduced Vertical Separation Minimum (RVSM) operations to aircraft operating between 29,000 and 41,000 feet in the airspace of the contiguous 48 States of the United States and the District of Columbia, Alaska, that portion of the Gulf of Mexico where the FAA provides air traffic services, the San Juan Flight Information Region (FIR), and the airspace between Florida and the San Juan FIR. The amendment also required any aircraft that is equipped with TCAS II and flown in RVSM airspace to incorporate a version of TCAS II software that is compatible with RVSM operations. The goals of this amendment were to assist aircraft operators to save fuel and time, to enhance air traffic control flexibility, and to enhance airspace capacity.

Original FAA finding: The FAA initially determined that this amendment would have a SEIOSNOSE. The FAA found through analysis that approximately 380 small operators would be significantly impacted by this amendment. These small operators were expected to experience some disadvantages relative to large transport carriers, such as less flexibility for rotating their fleets through the RVSM approval process without a disruption in service, or suffering a significant fuel penalty by continuing to operate below 29,000 feet if electing to not upgrade or to delay aircraft upgrade plans. Therefore, the FAA considered alternatives to mitigate the economic impact on these small entities.

To reduce this economic impact, the FAA considered several alternative approaches to this rulemaking, including not enforcing the rule on small entities. Under this scenario, small operators would avoid $285.5 million in upgrade costs and downtime

costs, but safety would be compromised as a result of some 2,400 non-approved aircraft operating in the RVSM stratum. Therefore, the FAA rejected this alternative. The FAA also considered a phased implementation of RVSM alternative to give small entities greater flexibility. It considered implementation of RVSM for a smaller band such as 33,000 to 37,000 feet with eventual expansion to the full RVSM envelope of 29,000 to 41,000 feet. This alternative was rejected on the basis of simulations that revealed system safety and airspace management were negatively impacted when RVSM was applied in any altitude band other than 29,000 to 41,000 feet. In addition, controller workload, the potential for controller error, and operational complexity all increased. The FAA rejected this alternative in favor of the rule, as well. The FAA concluded that the final rule represented the best balance of costs and benefits for airspace users and air traffic providers without a reduction in aviation safety.

Finding of this 5 U.S.C. section 610 analysis and review: Since promulgation of this rule, circumstances have remained such that there is a continued need for the rule as implemented. Small entities retain the option of not upgrading their equipment to take advantage of RVSM operations and continuing to operate below 29,000 feet if they feel this is more to their advantage. However, based on this periodic analysis of the current impact of amendment No. 91-276, Reduced Vertical Separation Minimum in Domestic United States Airspace, on small entities, there continues to be a SEIOSNOSE. The FAA concludes that the final rule represents the best balance of costs and benefits for airspace users and air traffic providers without a reduction in aviation safety.

FEDERAL HIGHWAY ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	None	2008	2009
2	23 CFR parts 1 through 260	2009	2010
3	23 CFR parts 420 through 470	2010	2011
4	23 CFR part 500	2011	2012
5	23 CFR parts 620 through 637	2012	2013
6	23 CFR parts 645 through 669	2013	2014
7	23 CFR parts 710 through 924	2014	2015
8	23 CFR parts 940 through 973	2015	2016
9	23 CFR parts 1200 through 1252	2016	2017
10	New parts and subparts	2017	2018

Federal-Aid Highway Program

The FHWA has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-Aid Highway Program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highways is chapter I of title 23 of the U.S.C. Section 145 of title 23 expressly provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23 of the CFR primarily relate to the requirements that States must meet to receive Federal funds for the construction and other work related to highways. Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 372, subpart A, and 381	2008	2009
2	49 CFR parts 386, 389, and 395	2009	2010
3	49 CFR parts 325, 388, 350, and 355	2010	2011
4	49 CFR parts 380 and 382 to 385	2011	2012
5	49 CFR parts 390 to 393 and 396 to 399	2012	2013
6	49 CFR parts 356, 367, 369 to 371, 372, subparts B-C	2013	2014
7	49 CFR parts 373, 374, 376, and 379	2014	2015
8	49 CFR parts 360, 365, 366, and 368	2015	2016
9	49 CFR parts 377, 378, and 387	2016	2017
10	49 CFR parts 303, 375, and new parts and subparts	2017	2018

Year 1 (fall 2008) List of rules that will be analyzed during the next year

49 CFR part 372, subpart A - Exemptions

DOT

49 CFR part 381 - Waivers, exemptions, and pilot programs

Year 10 (fall 2007) List of rules analyzed and a summary of results

49 CFR part 375 - Transportation of Household Goods in Interstate Commerce; Consumer Protection regulations

- Section 610: An ongoing review of the regulations indicates there is a SEIONOSE. This part applies to small household goods firms that are engaged in interstate operations.
- General: The Agency will assess the need for changes once the review of these regulations is complete. FMCSA's plain language review of these regulations indicates no need for substantial revision.

49 CFR part 395 - Hours of Service of Drivers

- Review of the Hours of Service regulations will be delayed until year 2 of the upcoming review cycle. The Agency issues an interim final rule on December 17, 2007 (72 FR 71247). FMCSA anticipates publishing a final rule at the end of 2008.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR 571.223 through 571.500, and parts 575 and 579	2008	2009
2	23 CFR parts 1200 and 1300	2009	2010
3	49 CFR parts 501 through 526 and 571.213	2010	2011
4	49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222	2011	2012
5	49 CFR 571.101 through 571.110, and 571.135, 571.138 and 571.139	2012	2013
6	49 CFR parts 529 through 578, except parts 571 and 575	2013	2014
7	49 CFR 571.111 through 571.129 and parts 580 through 588	2014	2015
8	49 CFR 571.201 through 571.212	2015	2016
9	49 CFR 571.214 through 571.219, except 571.217	2016	2017
10	49 CFR parts 591 through 595 and new parts and subparts	2017	2018

Year 1 (fall 2008) List of rules that will be analyzed during the next year

49 CFR part 571.223 - Standard No. 223; Rear impact guards
49 CFR part 571.224 - Standard No. 224; Rear impact protection
49 CFR part 571.225 - Standard No. 225; Child restraint anchorage systems
49 CFR part 571.301 - Standard No. 301; Fuel system integrity
49 CFR part 571.302 - Standard No. 302; Flammability of interior materials
49 CFR part 571.303 - Standard No. 303; Fuel system integrity of compressed natural gas vehicles
49 CFR part 571.304 - Standard No. 304; Compressed natural gas fuel container integrity
49 CFR part 571.305 - Standard No. 305; Electric-powered vehicles: electrolyte spillage and electrical shock protection
49 CFR part 571.401 - Standard No. 401; Interior trunk release
49 CFR part 571.403 - Standard No. 403; Platform lift systems for motor vehicles
49 CFR part 571.404 - Standard No. 404; Platform lift installations in motor vehicles
49 CFR part 571.500 - Standard No. 500; Low-speed vehicles
49 CFR part 575 - Consumer information
49 CFR part 579 - Reporting of Information And Communications About Potential Defects

Plan for Evaluating the Effectiveness of Vehicle and Behavioral Programs, 2008-2012

In addition to reviewing its rules in accordance with the Section 610 Review Plan, NHTSA issued an *Evaluation Program Plan, 2008-2012,* on August 21, 2008. This document describes the Office of Regulatory Analysis and Evaluation's ongoing and planned evaluations of existing Federal Motor Vehicle Safety Standards and other vehicle-safety, behavioral-safety and consumer programs. It also summarizes the results of completed program evaluations. On August 29, 2008, NHTSA also issued a notice in the **Federal Register** (page 51045) inviting public comment on the plan. You may review this plan at http://www-nrd.nhtsa.dot.gov/Pubs/810983.PDF. You may review the **Federal Register** notice at http://edocket.access.gpo.gov/2008/pdf/E8-20061.pdf or in HTML format at http://edocket.access.gpo.gov/2008/E8-20061.htm.

You may comment until December 29, 2008, by accessing the FDMS at http://www.regulations.gov. Your comments should make reference to Docket No. NHTSA-2008-0143. The notice explains how to send comments.

FEDERAL RAILROAD ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 200 and 201	2008	2009

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FEDERAL RAILROAD ADMINISTRATION (Continued)
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
2	49 CFR parts 207, 209, 211, 215, 238, and 256	2009	2010
3	49 CFR parts 210, 212, 214, 217, and 268	2010	2011
4	49 CFR part 219	2011	2012
5	49 CFR parts 218, 221, 241, and 244	2012	2013
6	49 CFR parts 216, 228, and 229	2013	2014
7	49 CFR parts 223 and 233	2014	2015
8	49 CFR parts 224, 225, 231, and 234	2015	2016
9	49 CFR parts 222, 227, 235, 236, 250, 260, and 266	2016	2017
10	49 CFR parts 213, 220, 230, 232, 239, 240, and 265	2017	2018

Year 10 (fall 2007) List of rules analyzed and a summary of results

49 CFR part 213 - Track Safety Standards

- Section 610: There is a SEIOSNOSE. These are minimum safety requirements for railroad track that is part of the general railroad system of transportation. The FRA will conduct a formal review to identify whether opportunities may exist to reduce the burden on small railroads without compromising safety standards.
- Plain Language: FRA's plain language review of this rule indicates no need for substantial revision.
- General: Since the rule prescribes minimum safety requirements for railroad track that is part of the general railroad system of transportation, it will enhance the safety of rail transportation, protecting both those traveling and working on the system and those off the system who might be adversely affected by a rail incident.

49 CFR part 220 - Railroad Communications

- Section 610: There is a SEIOSNOSE. These are minimum requirements governing the use of wireless communications in connection with railroad operations. The FRA will conduct a formal review to identify whether opportunities may exist to reduce the burden on small railroads without compromising safety standards.
- Plain Language: FRA's plain language review of this rule indicates no need for substantial revision.
- General: Since the rule prescribes minimum requirements governing the use of wireless communications in connection with railroad operations. Uniform standard communications procedures and requirements throughout the railroad industry are necessary to ensure the protection and safety of railroad employees and general public, and to minimize the number of casualties.

49 CFR part 230 - Steam Locomotive Inspection and Maintenance Standards

- Section 610: There is no SEIOSNOSE.
- Plain Language: FRA's plain language review of this rule indicates no need for substantial revision.
- General: Since the rule prescribes minimum Federal safety standards of inspection and maintenance for all steam locomotive operated on railroads, these requirements are necessary to ensure the protection and safety of railroad employees and general public, and to minimize the number of casualties.

49 CFR part 232 - Brake System Safety Standards for Freight and Other Non-Passenger Train and Equipment; End-of-Train Devices

- Section 610: There is a SEIOSNOSE. These are minimum Federal safety standards for freight and other non-passenger train track systems and equipment as well as for freight and other non-passenger train brake systems. The FRA will conduct a formal review to identify whether opportunities may exist to reduce the burden on small railroads without compromising safety standards.
- Plain Language: FRA's plain language review of this rule indicates no need for substantial revision.
- General: Since the rule prescribes minimum Federal safety standards for freight and other non-passenger train track systems and equipment as well as for freight and other non-passenger train brake systems, it will enhance the safety of rail transportation, protecting both those traveling and working on the system and those off the system who might be adversely affected by a rail incident.

49 CFR part 239 - Passenger Train Emergency Preparedness

- Section 610: There is no SEIOSNOSE.
- Plain Language: FRA's plain language review of this rule indicates no need for substantial revision.
- General: Since the rule prescribes minimum Federal safety standards for the preparation, adoption and implementation of emergency preparedness plans by railroads, these requirements are necessary to ensure the protection and safety of railroad passengers and employees as well as the general public, and to minimize the number of casualties.

49 CFR part 240 - Qualification and Certification of Locomotive Engineers

- Section 610: There is no SEIOSNOSE.
- Plain Language: FRA's plain language review of this rule indicates no need for substantial revision.
- General: Since the rule prescribes minimum Federal safety standards and guidelines for the eligibility, training, testing, certification and monitoring of all locomotive engineers, it will ensure and enhance the protection and safety of railroad employees and general public and minimize the number of casualties.

49 CFR part 265 - Nondiscrimination in Federally Assisted Railroad Programs

- Section 610: There is no SEIOSNOSE.

- Plain Language: FRA's plain language review of this rule indicates no need for substantial revision.
- General: The purpose of the rule is to ensures that no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program or activity funded in part through financial assistance under the Railroad Revitalization and Regulatory Reform Act of 1976, or any provision of law amended by the Act.

Year 1 (fall 2008) List of rule(s) that will be analyzed during next year

49 CFR part 200 - Informal Rules of Practice for Passenger Safety
49 CFR part 201 - Formal Rules of Practice for Passenger Service

FEDERAL TRANSIT ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 604, 605, and 633	2008	2009
2	49 CFR parts 661 and 665	2009	2010
3	49 CFR part 633	2010	2011
4	49 CFR parts 609 and 611	2011	2012
5	49 CFR parts 613 and 614	2012	2013
6	49 CFR part 622	2013	2014
7	49 CFR part 630	2014	2015
8	49 CFR part 639	2015	2016
9	49 CFR parts 659 and 663	2016	2017
10	49 CFR part 665	2017	2018

Year 10 (fall 2007) List of rules analyzed and summary of results

49 CFR part 624 - Clean Fuels Program

- Section 610: The Agency has determined that the rule will not have a significant effect on a substantial number of small entities. This rule imposes no new costs because it merely modifies the application procedures for an existing grant program.
- Plain Language: The rule was drafted using plain language techniques.
- General: No changes are necessary since the benefits of the rule justify its costs and the regulation imposes the least burden.

Year 1 (fall 2008) List of rules that will be analyzed during the next year

49 CFR part 604 - Charter Services
49 CFR part 605 - School Bus Operations
49 CFR part 633 - Project Management Oversight

MARITIME ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	46 CFR parts 201 through 205	2008	2009
2	46 CFR parts 221 through 232	2009	2010
3	46 CFR parts 249 through 296	2010	2011
4	46 CFR part 298	2011	2012
5	46 CFR parts 307 through 309	2012	2013
6	46 CFR part 310	2013	2014
7	46 CFR parts 315 through 340	2014	2015
8	46 CFR parts 345 through 381	2015	2016
9	46 CFR parts 382 through 389	2016	2017
10	46 CFR parts 390 through 393	2017	2018

Year 10 (fall 2007) List of rules analyzed and a summary of the results

46 CFR part 390 - Capital Construction Fund

- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- General: No overall revision of the rule is needed at this time; however, technical amendments were made to the rule so that it correctly referenced sections in the United States Code. Where confusing or wordy language has been identified, revisions will be made.

46 CFR part 391 - Federal Income Tax Aspects of the Capital Construction Fund

- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.

• General: No changes are needed. Where confusing or wordy language has been identified, revisions will be made.

Year 1 (fall 2008) List of rules that will be analyzed during the next year

46 CFR part 201 - Rules of Practice and Procedure
46 CFR part 202 - Procedures Relating to Review by Secretary of Transportation of Actions by Maritime Subsidy Board
46 CFR part 203 - Procedures Relating to Conduct of Certain Hearings Under the Merchant Marine Act, 1936
46 CFR part 204 - Claims Against the Maritime Administration Under the Federal Tort Claim Act
46 CFR part 205 - Audit Appeals; Policy and Procedure

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA) SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	Part 178	2008	2009
2	Parts 178, 179, 180	2009	2010
3	Parts 172 and 175	2010	2011
4	Sections 171.15 and 171.16	2011	2012
5	Parts 106, 107, 171, 190, 195	2012	2013
6	Parts 174, 177, 191, 192	2013	2014
7	Parts 176, 199	2014	2015
8	Parts 172, 173, 174, 175, 176, 177, 178	2015	2016
9	Parts 172, 173, 174, 176, 177, 193	2016	2017
10	Parts 173, 194	2017	2018

Year 8 (fall 2005) List of rules analyzed and a summary of the results

49 CFR part 110 - Hazardous Materials Public Sector Training and Planning Grants

- Section 610: No SEIOSNOSE. The vast majority of grant applicants are not considered small entities as SBA defines that term. In the past 10 years, only eight entities meeting the small business definition have applied for and received HMEP grants. Further, the grant application process is specifically designed to minimize the burden on all grantees, including those that meet the definition of small entity.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.
- General: No changes are necessary since the benefits of the rule justify its costs and the regulation imposes the least burden.

49 CFR part 195 - Transportation of Hazardous Liquids by Pipeline

- Section 610: NO SEIOSNOSE. The vast majority of hazardous liquid operators are not small entities as defined by the SBA.
- Plain Language: We will make revisions where wordy or confusing language is identified.
- General: No changes are necessary since the benefits of the rule justify its costs and the regulation imposes the least burden.

Year 1 (fall 2008) List of rules that will be analyzed during the next year

49 CFR part 178 - Specifications for packagings

RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION (RITA) SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	14 CFR part 241, form 41	2008	2009
2	14 CFR part 241, schedule T-100, and part 217	2009	2010
3	14 CFR part 298, 49 CFR 1420	2010	2011
4	14 CFR part 241, section 19-7	2011	2012
5	14 CFR part 291	2012	2013
6	14 CFR part 234	2013	2014
7	14 CFR part 249	2014	2015
8	14 CFR part 248	2015	2016
9	14 CFR part 250	2016	2017
10	14 CFR part 374a, ICAO	2017	2018

Year 6 (fall 2003) List of rule(s) analyzed and a summary of results

14 CFR part 234 - Airline Service Quality Performance Reports

- Section 610: No SEIOSNOSE.
- Plain Language: This rule is being reviewed as part of an overall aviation data requirements review and modernization program, which will also take into account the plain language initiative.
- General: This rule is being reviewed as part of an overall aviation data requirements review and modernization program.

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Year 7 (fall 2004) List of rule(s) analyzed and a summary of results

14 CFR part 249 - Preservation of Air Carrier Records

- Section 610: No SEIOSNOSE.
- Plain Language: This rule is being reviewed as part of an overall aviation data requirements review and modernization program, which will also take into account the plain language initiative.
- General: This rule is being reviewed as part of an overall aviation data requirements review and modernization program.

Year 8 (fall 2005) List of rule(s) analyzed and a summary of results

14 CFR part 248 - Submission of Audit Reports

- Section 610: No SEIOSNOSE.
- Plain Language: This rule is being reviewed as part of an overall aviation data requirements review and modernization program, which will also take into account the plain language initiative.
- General: This rule is being reviewed as part of an overall aviation data requirements review and modernization program.

Year 1 (fall 2008) List of rules that will be analyzed during the next year

14 CFR part 241 — Uniform System of Accounts and Reports for Large Certificated Air Carriers, Form 41

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	33 CFR parts 401 through 403	2008	2009

Year 1 (fall 2008) List of Rules that will be analyzed during the next year

33 CFR part 401 - Seaway Regulations and Rules
33 CFR part 402 - Tariff of Tolls
33 CFR part 403 - Rules of Procedure of the Joint Tolls Review Board