such specialists to maintain fair and orderly markets.

B. Business Transactions

The Commission believes that the general restrictions of Rule 460.10 on business transactions entered into by specialists with companies in whose stock the specialist is registered help ensure that the issuer does not improperly influence the specialist in the performance of his or her market making duties by the provision of goods or services upon advantageous terms. The proposal would exempt specialists from this prohibition as to the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available.

The Commission believes that the NYSE's proposed rule, as amended, is appropriate as it will continue to proscribe business transactions that may give rise to a conflict of interest, while permitting specialists to engage in routine business transactions that do not raise the concerns that the rule is intended to prevent. The proposal limits the type of business transactions in which a specialist may engage with the issuer of a security in which the specialist is registered to those that are available to all other business entities and consumers on the same terms and conditions and that confer no special status to the recipient beyond that of a consumer. The Commission expects the NYSE to interpret this provision narrowly so as to permit business dealings between a specialist and the issuer of a specialty security only where the service or good is routinely available to the public, confers no special status to the recipient beyond that of a consumer, and is on terms and conditions that are generally available.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice of such filing thereof in the Federal Register. The Commission notes that accelerated approval of the proposal is appropriate in order to allow the NYSE to trade CountryBasket securities as set forth in File No. SR–NYSE–95–23 on the anticipated initial trading date of March 25, 1996. Moreover, the Commission notes that the proposal, as amended, was noticed for a period of 16 days, and that no comments were received on the proposal during that period.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSE–96–01), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7842 Filed 3–29–96; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. § 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C Chapter 35).

DATES: March 26, 1996.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 30 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Judith Street; (202) 267–9895; ABC–100; 800 Independence Avenue SW.; Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, requesting emergency processing for 90 days effective March 25, 1996, in accordance with criteria set forth in that Act, for FAA Acquisition Management System Format, 2120-####. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection request was submitted to OMB on March 25, 1996:

1. OMB No: 2120-xxxx

Administration: Federal Aviation Administration (FAA).

Title: FAA Acquisition Management System (FAAAMS).

Need for Information: Pursuant to Section 348 of Public Law 104–50, the FAA hereby develops and implements a new acquisition management system that addressees the unique needs of the agency.

Proposed Use of Information: The information is necessary for the FAA acquisition organization to plan and conduct acquisition of varying types (supplies, services, real estate, etc.), including establishing contracts and monitoring contractor compliance. This information collection is pursuant to all precepts of OMB Circular A–109, Major System Acquisition and Public Law 104–50 ''Making Appropriations for the Department of Transportation and Agencies'', Section 348.

Frequency: On occasion, monthly, annually.

Burden Estimate: 333,292 hours.

Respondents: Individual or households, Business or other for profit, not-for-profit institutions, Federal Government

Number of Respondents: 3,338.

Form(s): one.

Phillip Leach,

Computer Specialist, Information Resource Management (IRM) Strategies Division.

[FR Doc. 96–7827 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–13–P

Federal Highway Administration

[FHWA Docket No. 94–29]

Exemption Criteria Policy for Highway Sanctions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final policy statement.

SUMMARY: The purpose of this notice is to establish a policy concerning exemption criteria used to determine which projects could advance if the Environmental Protection Agency (EPA) imposes highway sanctions in accordance with section 179(a) or section 110(m) of the Clean Air Act

(CAA) and applicable EPA regulations. These exemption criteria define the requirements which establish the basis for project exemptions, and describe and clarify the types of projects and programs that are exempt during highway sanctions.

EFFECTIVE DATE: March 11, 1996.

ADDRESSES: Materials relevant to this final notice are contained in Docket No. 94–29, FHWA, Room 4232, HCC–10, Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. The docket may be viewed between the hours of 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kirk D. Fauver, Office of Environment and Planning, (202) 366–2079, or Mr. Reid Alsop, Office of Chief Counsel, (202) 366–1371, FHWA. Office hours are from 7:45 a.m. to 4:15 p.m., et., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This final notice on the exemption criteria for highway sanctions provides clarifications regarding the types of projects (''exempt projects'') listed in section 179(b)(1) of the Clean Air Act (CAA) as amended in 1990 (42 U.S.C. 7509(b)(1)), that may continue to advance while an area is subject to highway funding sanctions. Under section 179(b) and section 110(m) of the CAA, the EPA Administrator may impose a prohibition on project approvals and grants made under title 23, United States Code, by the Secretary of Transportation (''highway sanctions''). The descriptions of exempt projects contained within this document would apply to sanctions applied under section 179(a) (''mandatory sanctions'') or section 110(m) (''discretionary sanctions''). Section 110(m) contemplates circumstances under which EPA may extend highway sanctions to areas not designated as ''nonattainment''. Hence, the information contained in this final notice applies to attainment, nonattainment, and unclassifiable areas. As of this date EPA has published two final rules related to sanctions. The first was published on January 11, 1994, entitled ''Criteria for Exercising Discretionary Sanctions Under Title I of the Clean Air Act'' (59 FR 1476; 40 CFR Part 52). It establishes the criteria to guide EPA's decision on whether, in a specific circumstance, to impose discretionary sanctions on a statewide basis under section 110(m).

A second regulation, ''Selection of Sequence of Mandatory Sanctions for Findings Made Pursuant to Section 179 of the Clean Air Act,'' was published on August 4, 1994 (59 FR 39832; 40 CFR Part 52). This regulation establishes that, following section 179(a) findings, the 2-to-1 offset sanction on new or modified major stationary sources applies first, 18 months after the finding (except where EPA reverses the order through a separate rulemaking), unless EPA has determined that the State corrected the deficiency that prompted the finding. Highway sanctions apply second, six months after application of the offset sanction, unless EPA has determined that the State corrected the deficiency that prompted the finding.

Thos two final rules (with this final notice on exemption criteria) effectively supersede the joint DOT/EPA notice of April 10, 1980 (45 FR 24692), ''Federal Assistance Limitation Required by section 176(a) of the Clean Air Act.'' The EPA also expect to publish another regulation sometime in the future that would establish the sequence of sanctions applied under section 502(d)(2)(B) of the Clean Air Act relating to the EPA's permit program.

Preamble to the Final Criteria Policy Notice

The outline for the contents of the preamble to the final criteria policy notice is as follows:

I. Requirements Which Establish the Basis for Highway Sanction Exemptions

Under Section 179(b)(1) of the CAA, the Secretary of Transportation (as delegated to the FHWA) may make certain project approvals and award grants, even while the nonattainment area or State is under highway sanctions. As stated in section 179(b)(1) of the CAA, safety projects could go forward provided the Secretary of Transportation determines that, based on accident or other data, the principal purpose of the project is an improvement in safety to resolve a demonstrated problem and will likely result in a significant reduction or avoidance of accidents.

In addition to safety projects, section 179(b)(1) specifically exempts seven activities from highway sanctions (See ''Congressionally Authorized Activities'' of this final notice). Projects that the EPA Administrator, in consultation with the Secretary of Transportation, determines would contribute to air quality improvement and would not encourage single occupancy vehicle (SOV) capacity also are exempted. Programs and projects which are allowed to go forward under section 179(b)(1) should strive to alleviate emissions and congestion problems.

II. General

This preamble discusses the comments received during the 60-day public comment period, provides FHWA's responses to these comments, and indicates how resulting changes were incorporated in the final exemption criteria (originally proposed via 60 FR 34315). The exemption criteria notice clarifies and establishes types of highway projects which are exempt (or ''categorically exempt'') from highway sanctions. Categorical exemptions are title 23-funded or approved transportation projects that do not need additional information or documentation to justify them as being ''exempt'' during section 179(a) or 110(m) CAA highway sanctions. Also, other ''exempt'' title 23-funded or approved transportation projects are identified in this final notice. These ''exempt'' transportation projects, although not deemed ''categorically exempt'', could be allowed to move forward (with additional justification and data provided by the state) in the event of highway sanctions. Categorically exempt projects were designated under this final notice because EPA and DOT have determined that such projects either will improve air quality and not encourage single occupancy vehicle (SOV) capacity or are statutorily exempt under section 179(b) of the CAA.

The final exemption criteria also recognize the respective roles and responsibilities of the FHWA (in consultation with the EPA) in applying funding and program/approval limitations under section 179(b)(1), when a highway sanction is imposed by EPA under section 179(a) or section 110(m) of the CAA.

The final exemption criteria are applicable nationwide. Although the FHWA will consult with EPA to determine whether projects meet the exemption criteria, the final authority to determine whether a project is exempt from highway sanctions, under the safety exemption and other specific statutory exemptions, is the sole responsibility of the Secretary of Transportation (as delegated to the FHWA). Other transportation-related projects, not covered under the aforementioned specific exemptions, may be exempted if the EPA Administrator, in consultation with the Secretary of Transportation, finds that they will improve air quality and not encourage SOV capacity under section 179(b)(1)(B)(viii) of the CAA.

III. Discussion of Comments Received by FHWA on Proposed Exemption Criteria

The following section discusses the significant comments received by the FHWA in response to the proposed policy on the exemption criteria published on June 30, 1995 (60 FR 34315) and FHWA's response to the comments. Twenty one (21) comments on the proposed exemption criteria were received by FHWA. The comments received by FHWA were sent by metropolitan planning officials, state departments of transportation, environmental advocates, highway safety advocates, county commissioners, and one from a governor's office. Issues ranged from providing categorical exemptions for ''stand-alone'' environmental actions, to providing additional exemptions for actions not originally considered as part of the proposed exemption criteria.

A. Stand-Alone Environmental Projects

The proposed policy statement on exemption criteria requested comment on eight ''stand-alone'' projects which are likely to have ''de minimis'' environmental or environmentally beneficial impacts. These eight ''stand-alone'' projects are not specifically exempt from sanctions by the CAA. These projects may improve water quality, mitigate wetland impacts, provide landscaping, preserve historic structures, reduce noise, and have other aesthetic benefits. While the proposed policy statement did not exempt these projects, FHWA requested comment as to whether the following types of projects should be exempt from highway sanctions because of their ''de minimis'' impact on air quality. These actions are typically exempted from the CAA transportation conformity requirements (see 40 CFR sections 51.460 and 93.134). Commenters were requested to include a discussion of the basis for their position in favor of, or against, such an exemption. The projects for which exemption status was being considered included:

1. Wetland mitigation;
2. Planting trees, shrubs, wildflowers;
3. Landscaping;
4. Purchase of scenic easements;
5. Billboard and other sign removal;
6. Historic preservation;
7. Transportation enhancements;
8. Noise abatement.

Comments Received by FHWA

Many of the commenters (in response to the proposed exemption criteria) noted that the stand-alone projects listed above have little or no impact on increasing vehicle-miles-traveled (VMT), nor can they be associated with encouraging SOV capacity. Of the twenty one (21) comments received, thirteen (13) expressed support for including these types of ''stand-alone'' projects as categorically exempt from highway funding sanctions. There were no comments received by FHWA that were opposed to exempting these projects.

Some of the commenters noted that these ''stand-alone'' projects actually improve or enhance the environment and have minimal or sometimes even positive impacts on the ambient air quality. In addition, one commenter stated that these types of projects constituted only 0.7 percent of their total state highway program. With the percentage of these types of actions so small, the commenter also added that the exclusion of these projects would not contribute significantly to the purpose of highway sanctions under Section 179(a) or 110(m) of the CAA. Additionally, the other potential environmental benefits of these ''stand-alone'' projects would not be realized if they were halted during a possible highway funding sanction scenario.

FHWA's Response to Comments

The FHWA has considered the comments received. The final exemption criteria generally exempt these ''stand alone'' projects from highway sanctions for several reasons. The significance of these projects, both in terms of impacts on air quality and in terms of highway program expenditures is ''de minimis'', as noted in the comments above, hence they would not add significantly to any punitive aspect of highway sanctions. In addition, such projects advance identifiable environmental or aesthetic goals and do not encourage increases in SOV capacity. Finally, these types of projects were generally exempted from the conformity requirements of section 176(c) of the CAA by the regulations implementing section 176(c) (see EPA's Final Rule on Transportation Conformity, 40 CFR sections 51.460 and 93.134) because these projects have no emissions impact, and were considered to be neutral or ''de minimis''.

However, consistent with the exemptions contained in the conformity regulations, the transportation enhancement activities (TEA) associated with the rehabilitation and operation of historic transportation buildings, structures, or facilities are not categorically exempted since such activities may, in some cases, have adverse impacts on air quality and may increase VMT.

A majority of the commenters suggested that flexibility be provided to allow other typically ''non-exempt'' projects, listed in section B (60 FR 34318) of the proposed exemption policy criteria, to be categorically exempt. However, as these projects could lead to expanded single occupant vehicle capacity, the FHWA believes that they can not be considered categorically ''exempt'' under the exemption criteria.

B. High Occupancy Vehicle (HOV) Exemptions

The proposed exemption criteria provided categorical exemptions for the construction of new HOV lanes (only if those lanes were solely dedicated as 24-hour HOV facilities), and the conversion of existing lanes for HOV use during peak hours.

Comments Received by FHWA

Comments were received by the FHWA on the issue of providing exemptions for all HOV lanes, regardless of time-of-day restrictions (whether 24-hour or peak hour HOVs). One of the commenters noted that the exemption for HOV facilities presented in the proposed exemption criteria (60 FR 34319) only applied to the construction of 24-hour HOV lanes, and suggested that this restriction is ''inappropriately narrow''. Additionally, the commenter stated that the application of sanctions to HOV lanes (which are open to non-HOV travel during off-peak periods) would only serve to limit the States' ability to develop HOV facilities in a manner receiving broad public acceptance.

FHWA's Response to Comments

Upon further review of section 179(b)(1)(B) of the CAA, the FHWA, in consultation with EPA, has decided to allow categorical exemptions for those

HOV projects described in the proposed criteria (i.e. construction of 24-hour HOV facilities, and the conversion of existing lanes during 24-hour periods). The construction of new 24-hour HOV facilities or the conversion of existing lanes to 24-hour HOV facilities are specifically exempted under this notice, since these actions meet the definition of ''solely for the use of passenger buses or high occupancy vehicles'' per section 179(b)(1)(B)(ii) of the CAA.

Additionally, FHWA and EPA agree that the conversion of existing lanes during peak hours should also be categorically exempt under section 179(b)(1)(B)(viii) of the CAA, because these actions would improve air quality without encouraging SOV capacity. The categorical exemption, regarding the conversion of *existing lanes for HOV use during peak hours,* was originally made under section 179(b)(1)(B)(ii) and described under ''Congressionally Authorized Activities'' of the proposed exemption criteria notice. The categorical exemption for these projects in now made under section 179(b)(1)(B)(viii) of the CAA under ''Air Quality Improvement Programs That Do Not Encourage Single Occupancy Vehicle Capacity'' of the final exemption criteria, since these projects more appropriately meet this exemption criterion.

Other HOV projects, that are not categorically exempt under section 179(b)(1)(B)(ii) of the CAA, may be exempted on a case-by-case basis pursuant to the section entitled ''Air Quality Improvement Programs That Do Not Encourage Single Occupancy Vehicle Capacity'' of the final exemption criteria, per section 179(b)(1)(B)(viii) of the CAA. These categorical exemptions are granted only if the EPA Administrator (in consultation with the Secretary of Transportation) finds that they would improve air quality and would not encourage single occupancy vehicle capacity. In addition, the final exemption criteria also categorically exempt all transportation control measures (TCMs) in an EPA-approved SIP or Federal Implementation Plan which have emission reduction credit and will not encourage SOV capacity (per section 179(b)(1)(B)(viii) of the CAA).

C. Maintenance Projects

The proposed exemption criteria did not provide categorical exemptions for maintenance and rehabilitation projects, unless the projects could be shown to have a principal purpose of improving safety (such as projects from the Highway Safety Improvement Program or the Highway Bridge Replacement and Rehabilitation Program).

Comments Received by FHWA

The FHWA received several comments which proposed that all highway maintenance projects (such as resurfacing, restoration, and rehabilitation) regardless of safety and SOV capacity expansion concerns, be considered ''exempt'' from highway sanctions. These comments requested more flexibility and stated that these actions should be considered exempt, unless ''FHWA can show that air quality well be adversely affected'' by their implementation. Commenters also suggested that repaving and resurfacing projects that may be shown to improve traffic flow and safety be considered ''categorically exempt'' during the highway sanctions, as older deteriorated pavement may add to additional congestion and ultimately lead to air quality problems.

FHWA's Response to Comments

FHWA examined this issue and found that Congress reviewed the possibility of exempting resurfacing, restoration, and rehabilitation (''3–R'') type highway projects during the debates leading toward the development of the 1990 Clean Air Act Amendments. While there was an attempt to include a categorical exemption for such projects this approach was rejected in part because of concerns that a categorical exemption for all ''3–R'' type projects could become a ''huge loophole'' for projects exempted from sanctions under the safety category (Congressional Record; E3700; November 2, 1990). Consequently, ''3–R'' type projects must be reviewed on a case-by-case basis to ensure that each project's principal purpose is safety.

D. Project Development Actions Under the National Environmental Policy Act (NEPA)

The proposed exemption criteria described the extent to which project development actions under NEPA would be considered ''exempt'' from highway sanctions. The proposed criteria stated that project development activities under NEPA may be exempt from highway sanctions only if consideration of ''exempt'' alternatives, such as transit or other transportation demand management (TDM) measures, are actively being considered as reasonable independent alternatives.

Comments Received by FHWA

One commenter stated his support for providing exemptions for NEPA studies (if ''exempt'' project alternatives remain under consideration), because the studies would be considering alternatives that could help the state ultimately attain the national ambient air quality standards (NAAQS). One commenter recommended that added flexibility be provided during the project development process for those project development actions involving ''neutral'' project alternatives (which may not be ''highway-related'') that are not considered to be ''exempt'' under highway sanctions.

FHWA's Response to Comments

The final exemption criteria provide flexibility by allowing a broad range of TDM measures, TCMs in applicable SIPs (which have emissions reduction credit and will not encourage SOV capacity), mass transit, and other ''exempt'' project actions to be advanced as part of project development studies and activities if they meet the criteria of this final notice. The final criteria provide for the continued funding of project development activities during a highway sanctions scenario, as long as project alternatives that would be ''exempt'' under the policy statement are still being considered by the project sponsor. Once all of the project alternatives that could be considered ''exempt'' from highway sanctions are eliminated, then project development activities for NEPA or other purposes (such as MIS development studies) are no longer exempt, and additional project development activities or studies can not be approved or funded under title 23 while highway sanctions are in effect.

E. Exemptions for Congestion Mitigation and Air Quality Improvement (CMAQ) Projects and Programs

Categorical exemptions were not provided for all CMAQ projects in the proposed exemption criteria. Both the proposed and final exemption criteria provide categorical exemptions for all TCMs in approved SIPs or Federal Implementation Plans (FIPs) which have emission reduction credit and will not encourage SOV capacity, and for those CMAQ-funded projects related to inspection and maintenance facilities and activities, as well as bicycle/pedestrian and carpool/vanpool programs. The proposed and final exemption criteria also provide an opportunity for project exemptions upon review of air quality benefits on a case-by-case basis, providing the project meets the criteria under ''Air Quality Improvement Programs That Do Not Encourage Single Occupancy Vehicle Capacity'' of this final notice.

Comments Received by FHWA

There were four comments that supported the full blanket exemption of all CMAQ programs and projects from highway sanctions, since their primary goal (by definition) is to contribute to the attainment of the NAAQS. One commenter stated that the process is redundant and unnecessary, since CMAQ projects can not be authorized unless they conform to the requirements of federal law and regulation. Because FHWA requires a project justification and analysis before authorization of each CMAQ project, the commenter recommended that FHWA grant categorical exemptions for these CMAQ projects in order to avoid duplication of effort and to conserve resources.

FHWA's Response to Comments

The final notice on exemptions does not provide for full blanket CMAQ exemptions. Under the CAA, exempt projects may not encourage SOV capacity, and in some cases there could be potential SOV capacity expansion provided by certain CMAQ-funded projects. As noted, the following four types of projects (which may receive CMAQ funding) are considered to be ''categorically exempt'' and will not require additional review by the EPA or FHWA in the event of highway sanctions:

1. TCMs contained in an EPA-approved SIP (or Federal Implementation Plan which have emission reduction credit and will not encourage SOV capacity);
2. Inspection and maintenance facilities and activities eligible under CMAQ;
3. Bicycle and pedestrian facilities; and
4. Carpool/Vanpool programs.

Other CMAQ projects may be exempted on a case-by-case basis, pursuant to the final exemption criteria, if the project can be shown to improve air quality and not encourage SOV capacity.

F. Safety

The proposed exemption criteria provided for categorical exemptions for several programs which have been established under title 23, U.S.C., expressly for the purpose of addressing safety objectives, either through programs targeted at driver behavior or safety projects intended to remediate structures or facilities, or to prevent loss of human life.

Some of these safety programs will need to provide justification to show that the project is related to safety (unless the project is drawn out of a statewide safety program or is related to the programs administrated by National Highway Traffic Safety Administration (NHTSA)). These ''additional justification'' projects include capital projects involving elimination of safety hazards, emergency relief (ER) projects that involve added capacity, improving safety deficiencies, and other programs such as pavement resurfacing for skid resistance.

Comments Received by FHWA

One of the commenters expressed support for flexibility in determining whether the ''principal purpose'' of a project activity is improving safety. The commenter stated that a ''strict application of a test which requires showing that safety be the 'principal purpose' could preclude projects which have a significant impact on other factors.'' A highway safety advocate expressed strong concern about the designation of ''improvements to, or reconfiguration of, existing interchanges'' as ''non-exempt'' under the section entitled ''Typically Nonexempt Projects''. The commenter suggested that this designation may lead to safety concerns related to the perpetuation of older substandard geometric designs during highway sanctions.

Another commenter stated that the safety program provisions (dealing with exempt actions) were too focused on the NHTSA programs, and not title 23 federal-aid safety programs administered by the FHWA (without NHTSA participation). The commenter suggested that ''FHWA-only'' programs should be included in the exempt criteria.

FHWA Response to Comments

Consistent with section 179(b)(1) of the CAA, the final exemption criteria allow certain exemptions for ''specific'' safety projects and programs, that are not from a statewide safety program, once justification is provided to demonstrate that they improve safety. This data may be derived from accident data drawn out of a safety or bridge management system (under this final notice). Flexibility was provided in both the proposed and final criteria to allow exemptions of ''specific'' safety projects and programs that can be shown to be exempt (on the grounds of safety) based upon national experience. Allowable exemptions for ''specific'' safety projects under the exemption criteria may involve upgrading obsolete geometric designs (for improving limited sight distance), replacement of substandard guardrail, rehabilitation for skid resistance, or address other safety needs and purposes, as outlined in the exemption criteria.

Categorical exemptions of ER projects (which do not involve substantial functional, locational, or capacity changes) are considered important and have been included in the final criteria. Following a catastrophic event such as an earthquake or flood, it would not be in the public interest to require project sponsors to provide additional safety information or data. Therefore, FHWA has agreed to categorically exempt all ER projects which do not involve substantial functional, locational, or capacity changes funded under title 23 in order to provide flexible administrative relief in the event of a natural disaster, civil unrest, or terrorist act. Such projects for the repair of damage that follows such catastrophic events are considered to be ''exempt'' safety projects. It is noted that, for conformity purposes, ER projects are ''exempt'' under the EPA conformity rule if the project does not involve substantial functional, locational, or capacity changes.

Title 23 ER projects discussed in the final notice are authorized expenditures by the Secretary of the DOT, as defined under section 125 of title 23, United States Code (23 U.S.C.). The eligible activities under the ER program include the repair or reconstruction of highways, roads, and trails which the Secretary has found to be seriously damaged as the result of a natural disaster (e.g., floods, hurricanes, tidal waves, earthquakes, severe storms, or landslides, etc.). ER funds cannot be used for purposes of repairing or reconstructing bridges that have been closed to all vehicular traffic by the State or responsible local official due to structural deficiencies, lack of maintenance, or physical deterioration. Provisions for the ER program can be found under 23 CFR part 668.

The proposed exemption criteria did not intend to place stronger emphasis on the exempted NHTSA programs than on the applicable exempt title 23 safety programs and projects funded under the ISTEA (or other title 23 programs). Although specific identification of a highway safety project from an obvious safety-related program such as the Highway Safety Improvement Program or the Hazard Elimination Program (23 U.S.C. 152) was mentioned in the proposed exemption criteria, it was not meant to eliminate other ''exempt'' title 23 safety programs or projects that may be funded under the Surface Transportation Program (STP) or the National Highway System (NHS) or any other ISTEA (or title 23) funded program. Title 23 safety projects, however, must meet the criteria for ''exempt'' status (whether individually

or as part of a statewide program) as defined in the final notice on exemption criteria.

G. Transportation Planning and Research Activities

Comment Received by FHWA

One commenter stated that it was not clear as to whether all transportation research is exempt (because it may in some way benefit air quality or safety) or whether only those research projects that directly benefit air quality or safety are exempt.

FHWA's Response to Comment

As indicated in the proposed notice and carried forth under the final exemption criteria, all transportation planning and research activities are exempt from highway sanctions.

H. Use of Supporting Data From Transportation Management Systems

Section 1034 of the ISTEA amended title 23, United States Code, by adding section 303, Management Systems. Section 303 requires State development, establishment, and implementation of a system for managing each of the following: highway pavement of Federal-aid highways (PMS); bridges on and off Federal-aid highways (BMS); highway safety management system (SMS); traffic congestion (CMS); public transportation facilities and equipment (PTMS); and intermodal transportation facilities and systems (IMS). An interim final rule for these systems was published on December 1, 1993, as 23 CFR part 500.

On July 20, 1995, the FHWA and FTA issued a joint memorandum regarding updated compliance dates for the six management systems. The NHS Designation Act was signed by the President on November 28, 1995 which amended 23 U.S.C. 303(c) to allow States, at any time, to elect to not implement, in whole or part, any one or more of the ISTEA management systems under section 303. However, in accordance with section 134(i)(3) of title 23 United States Code (as amended by the ISTEA of 1991), transportation management areas (TMAs) must include a congestion management system (CMS) as part of their transportation planning process.

The proposed exemption criteria suggested that data generated from bridge management systems or safety management systems could be used to justify exemptions for safety projects and programs in the event of highway sanctions. The preamble of the proposed exemption criteria also discussed the implementation dates required by the interim final rule on the ISTEA management systems issued on December 1, 1993 (as 23 CFR part 500). The National Highway System (NHS) Designation Act of 1995 has made the development and implementation of one or more of the ISTEA management systems optional for the States. However, in accordance with section 134(i)(3) of title 23 United States Code (as amended by the ISTEA of 1991), transportation management areas (TMAs) must include a congestion management system as part of their transportation planning process.

Comments Received by FHWA

In reference to the implementation dates for the six management systems required under the ISTEA legislation (via 23 CFR part 500), three commenters correctly noted that the FHWA and FTA have subsequently published revised deadlines as part of the government-wide regulatory streamlining effort. One commenter suggested that if the output of management systems is going to be used as a basis for determining sanction exemptions, then highway sanctions should only apply to the NHS routes.

FHWA's Response to Comments

The commenters's assumption regarding the application of sanctions to NHS System projects is incorrect as each air basin or region or subregion that is under highway sanctions issued by the EPA under Section 179(a) or 110(m) of the CAAs would be subject to sanctions for all federal-aid title 23 programs and projects (that are not exempt under this exemption criteria), regardless of the facility-type or route designation, within the applicable area or region. The CAA and EPA implementing regulations do not limit highway funding sanctions only to NHS routes or any other facility type funded under the ISTEA (or title 23). Despite the changes to the management system requirements made by the NHS Designation Act, information from the safety or bridge management systems may be used for the purpose of providing data to support safety exemptions under this final criteria notice.

I. Improved Streamlining

One of the more critical comments received was in the area of improved streamlining for project delivery during the highway sanctions period by the DOT and EPA. During a highway sanctions scenario, the State departments of transportation will be responsible for reviewing and forwarding a listing of ''exempt'' highway projects to the FHWA prior to FHWA approval, and the subsequent authorization of title 23 funds. The FHWA will review the State departments' of transportation lists of ''exempt'' programs and projects (in consultation with EPA) and make its determination of exemptions prior to issuing federal approvals or authorizations to proceed. The FHWA will provide the EPA with a 14-day review and comment period prior to federal approval and subsequent authorization of funds.

J. FHWA's Response to Other Comments Received

The FHWA received a few additional comments. They ranged from questions related to the redistribution of title 23 highway funds to unsanctioned areas, general views on VMT growth and air quality trends, and other general discussions unrelated to the proposed or final exemption criteria. Since these comments could not be addressed by FHWA in the scope of the final exemption criteria and were not directly related to (nor influenced) the development of the exemption criteria, the FHWA did not believe it was pertinent to address them as part of this final exemption criteria.

IV. Safety Program/Project Requirements Under 23 U.S.C.

Several programs have been established under title 23, U.S.C., expressly for the purpose of addressing safety objectives, either through programs targeted at driver behavior or safety projects intended to remediate structures, facilities, or prevent loss of human life. These programs include: the Highway Safety Improvement Program as defined under 23 CFR Part 924; the Highway Bridge Replacement and Rehabilitation Program (HBRRP) as defined under 23 CFR Part 650, Subpart D; and grant programs whose principal purpose is to improve safety and which do not include any capital improvements, including all programs established in Chapter I or IV or 23 U.S.C. that are administered by the NHTSA.

Additionally, the Transportation Management and Monitoring Systems defined under 23 CFR Part 500 (58 FR 63475, December 1, 1993) defined requirements for the six management systems and the Traffic Monitoring System. As mentioned earlier, the NHS Designation Act of 1995 made the implementation of the ISTEA management systems optional for the States. The final notice allows States the flexibility to justify the exemptions of safety or bridge projects using data from their own safety or bridge management

systems. This information may be used to supplement existing data or, as it is developed, may improve existing data or information currently available.

Programs or projects stemming from the following provisions could be exempt on the basis of an established safety-related project need meeting section 179(b) requirements. Title 23 of the Code of Federal Regulations sets forth the requirements for eligibility for federal funding for projects under the Highway Safety Improvement Program (23 CFR Part 924) and the HBRRP (23 CFR Part 650 Subpart D) and programs administered by NHTSA (Chapters II and III of 23 CFR).

These programs have been established with the purpose of addressing safety objectives and may be used to establish justification for the safety exemptions under the CAA if the section 179(b) requirements and those of this final notice are fully met.

A. Highway Safety Improvement Program (23 CFR Part 924)

The Highway Safety Improvement Program requires each State to develop and implement a program which has as its goal reducing the number and severity of accidents and decreasing the potential of accidents on all highways. The program is to be continuous and its components consist of planning, implementation, and evaluation of safety programs and projects.

The implementation of the highway safety improvement program is subject to procedures set forth in 23 CFR Part 630, Subpart A, Federal-aid Programs Approval and Project Authorization, and the priorities developed in conjunction with 23 CFR part 924, section 924.9-Planning.

The planning components of the program shall incorporate a process for collecting and maintaining a record of accident data; a process for analyzing available data to identify hazardous locations on the basis of accident experience or accident potential; a process for conducting engineering studies to develop highway safety improvements; and projects considering the potential reduction in the number and severity of accidents.

B. The Highway Bridge Replacement Program (HBRRP)

This program is administered in accordance with 23 U.S.C. 144. Eligible work under this program includes the total replacement of a structurally deficient or functionally obsolete bridge, a nominal amount of approach work sufficient to connect the bridge to the roadway or major work required to restore the structural integrity of a bridge as well as work necessary to correct major safety defects. Bridge projects eligible for funding under the bridge replacement and rehabilitation program must be supported by bridge inventory data and evaluation of the bridge inventory.

Projects are submitted by the State to the FHWA in accordance with 23 CFR part 630, Subpart A, Federal-aid Programs Approval and Authorization. Priority consideration is given to those projects which will remove from service those highway bridges most in danger of failure.

C. Highway Safety Programs Administered by NHTSA

NHTSA administers (independently or cooperatively with other Federal agencies) programs whose principal purpose is to improve highway safety and which do not include any capital improvements. Under these programs, the agency awards either grants, contracts, or cooperative agreements. These programs include, but are not limited to, programs authorized under chapter IV of title 23, U.S.C., such as:

—Section 402, Highway Safety Programs, under which the agency promulgates guidelines and awards grants to States having approved highway safety programs designed to reduce traffic accidents and deaths, injuries and property damage;
—Section 403, Highway Safety Research and Development, under which the agency engages in research on all phases of highway safety and traffic conditions and other related research and development activities which will promote highway safety;
—Section 410, Alcohol Impaired Driving Countermeasures, under which the agency makes grants to States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving under the influence of alcohol or a controlled substance.

NHTSA programs also include, but are not limited to, programs authorized under Chapter I of title 23, U.S.C. such as: Section 153, Use of Safety Belts and Motorcycle Helmets, under which the agency has made grants to States with effective safety belt and motorcycle helmet use laws and under which States may be subject to the transfer of certain highway construction funds to section 402 programs for not having safety belt laws in effect.

The final highway sanction exemption criteria policy is as follows.

Memorandum

U.S. Department of Transportation
Federal Highway Administration
Date:
Reply to Attn of: HEP–40

Subject: Policy for Exemption Criteria to be Used to Determine Which Projects Can Advance if the Environmental Protection Agency Imposes the Highway Funding Sanction Under section 179(a) or 110(m) of the Clean Air Act (CAA), as Amended in 1990.

From: Rodney E. Slater, Federal Highway Administrator.

U.S. Department of Transportation.

To: Regional Federal Highway Administrators; Federal Lands Highway Program Administrator

This policy memorandum defines the exemption criteria that will be used to determine which projects can go forward and which grants can be awarded in the event EPA imposes highway sanctions under section 179(a) or section 110(m) of the CAA. This policy memorandum contains a description of the criteria for exemptions and clarification of the types of projects and programs that are exempt. Projects for which exemptions cannot be granted are also included in this policy memorandum.

General Description

Highway sanctions, when applied, halt the approval of projects and the award of any grants funded under Title 23, United States Code, except as defined in section 179(b) and as clarified by this policy memorandum. This applies to the following major funding programs:

1. Surface Transportation Program (STP).
2. National Highway System.
3. Interstate Maintenance.
4. Bridges.
5. Interstate Construction.
6. Interstate Substitution.
7. Congestion Mitigation and Air Quality Improvement Program (CMAQ).

Projects funded under all other Title 23 programs and other authorizations are also subject to sanctions, including demonstration projects identified by Congress and specified in the ISTEA of 1991 under sections 1103–1108 or in other laws, unless they meet the criteria set forth in this policy memorandum. Additionally, other Title 23 projects to be funded under previously authorized programs (prior to passage of the ISTEA, such as the Federal-aid Urban, Federal-aid Secondary Programs, etc.) may also be subject to certain highway funding restrictions under highway sanctions.

Projects funded under Title 49, U.S.C. chapter 53, the Federal Transit Act, as amended, are categorically exempt from

sanctions by law as are other transportation programs authorized by statutes other than Title 23.

Typical Nonexempt Projects

The following types of projects generally do not meet the exemption criteria in section 179(b)(1) and would not be allowed to be federally funded or approved under Title 23 unless it is demonstrated that they meet one or more of the exemption criteria. These include projects that expand highway or road capacity, nonexempt project development activities, and any other project that does not explicitly meet the criteria in this policy memorandum. These may include activities for:

1. The addition of general purpose through lanes to existing roads.
2. New highway facilities on new locations.
3. New interchanges on existing highways.
4. Improvements to, or reconfiguration of existing interchanges.
5. Additions of new access points to the existing road network.
6. Increasing functional capacity of the facility.
7. Relocating existing highway facilities.
8. Repaving or resurfacing except for safety purposes, as defined by section 179(b).
9. Project development activities, including NEPA documentation and preliminary engineering, right-of-way purchase, equipment purchase, and construction solely for non-exempt projects.
10. Transportation enhancement activities associated with the rehabilitation and operation of historic transportation buildings, structures, or facilities not categorically exempted.

Project Exemptions

Under section 179(b)(1) of the CAA, once EPA imposes highway sanctions, the FHWA may not approve or award any grants in the sanctioned area except those which generally meet the criteria within this memorandum. Congress specifically exempted projects which fall under three categories: (1) safety programs and projects (under section 179(b)(1)(A)); (2) seven congressionally-authorized activities (under section 179(b)(1)(B)(i–vii); and, (3) air quality improvement projects that would not encourage SOV capacity (under section 179(b)(1)(B)(viii) of the CAA). This policy memorandum further interprets and clarifies these statutory exemption provisions.

1. Safety Programs and Projects

Safety projects are those for which the principal purpose is an improvement in safety but the projects may also have other important benefits. These projects must resolve a demonstrated safety problem with the likely result being a significant reduction in or avoidance of accidents as determined by the FHWA. Such demonstration must be supported by accident or other data submitted by the State or appropriate local government.

Four general types of categories of safety-based programs and projects potentially meet the exemption criteria: grant programs and related activities; Emergency Relief (ER) projects; statewide safety improvement programs; and specific projects outside of a statewide safety program. Each category calls for varying levels of justification.

a. Programs administered by NHTSA qualify for blanket exemptions, on the basis that their principal purpose is to improve safety and do not include any capital improvements. Programs that fall within this category include but are not limited to: (1) Use Safety Belts and Motorcycle Helmets (23 U.S.C. 153); (2) Highway Safety Programs (23 U.S.C. 402); (3) Highway Safety Research and Development (23 U.S.C. 403); and (4) Alcohol-Impaired Driving Countermeasures (23 U.S.C. 410).

b. ER projects funded by Title 23 to repair facilities damaged or destroyed by natural disasters, civil unrest, or terrorist acts are exempt without further justification, provided that such projects do not involve substantial functional, locational, or capacity changes.

c. Statewide safety improvement programs include specific safety projects that can be justified on the basis of State or national level data, which will be additionally supported by data and analysis stemming from the State (or ISTEA) management system requirements once the systems are fully operational. Projects meeting this exemption category would come out of the Highway Safety Improvement Program (23 CFR Part 924) and the Highway Bridge Replacement and Rehabilitation Program (23 CFR Part 650, Subpart D). The Highway Safety Improvement Program also includes the Hazard Elimination Program (23 U.S.C. 152).

d. Specific projects for which justification is needed to show that the project is related to safety, unless the project is drawn out of a statewide safety program and would be likely to reduce accidents, would include capital projects such as:

—Elimination of, and safety features for, railroad-highway grade crossings.
—Changes in vertical or horizontal alignment.
—Increasing sight distance.
—Elimination of high hazard locations or roadside obstacles.
—Shoulder improvements, widening narrow pavements.
—Adding or upgrading guardrail, medians and barriers, crash cushions, fencing.
—Pavement resurfacing or rehabilitation to improve skid resistance.
—Replacement or rehabilitation of unsafe bridges.
—Safety roadside rest areas, truck size and weight inspection stations.
—Addition and upgrading of traffic control devices, (traffic signals, signs, and pavement markings).
—Lighting improvements.
—Truck climbing lanes.

Justification for an exemption on the grounds of safety must be based on accident or other data such as the data derived from a State's safety and bridge management system, the Highway Safety Improvement Program, or the Highway Bridge Replacement and Rehabilitation Program. Such data need not be specific to the proposed project's location, but may be based on accident or other data from similar conditions, including national experience where such projects have been implemented to remove safety hazards. For example, rigid highway sign posts were identified in the past as a safety hazard causing unnecessary deaths and injuries. The identification of this hazard led to national policy requiring rigid posts to be replaced with breakaway poles.

Projects exempted under the safety provision may not involve substantial functional (such as upgrading major arterial to freeways), locational, or capacity changes except when the safety problem could not otherwise be solved.

2. Congressionally Authorized Activities

Seven project types are identified specifically in the CAA section 179(b)(1) as exempt from highway sanctions. Essentially, these are projects that generally do not result in increased SOV capacity, or improve traffic flow (e.g., intersection improvements or turning lanes) in ways that reduce congestion and emissions:

a. Capital programs for public transit. These include any capital investment for new construction, rehabilitation, replacement, or reconstruction of facilities and acquisition of vehicles and equipment.

b. Construction or restriction of certain roads or lanes solely for the use of passenger buses or High Occupancy Vehicles (HOV). Exempt projects include construction of (or conversion of existing lanes to) new HOV lanes, if

those lanes are solely dedicated as 24-hour HOV facilities.

c. Planning for requirements for employers to reduce employee work-trip related vehicle emissions. This includes promotional and other activities associated with this type of program that are eligible under Title 23.

d. Highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a new emission reduction.

e. Fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations (this includes the construction of new facilities and the maintenance of existing facilities).

f. Programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration, particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs. Exempt projects include all activities of these types that are eligible under existing funding programs.

g. Programs for breakdown and accident scene management, non-recurring congestion, and vehicle information systems, to reduce congestion and emissions.

The FHWA will consult with EPA on any project claimed to reduce emissions (e.g., with projects falling under paragraphs c, d, and g, above). However, the final authority to determine whether a project meets the criteria in this memorandum and is exempt from highway sanctions rests with the FHWA.

3. Air Quality Improvement Programs That Do Not Encourage Single Occupant Vehicle (SOV) Capacity

Transportation programs not otherwise exempt that improve air quality and which would not encourage SOV capacity (as determined by EPA in consultation with DOT) are also exempt from highway sanctions. For example, projects listed in section 108(f) of the CAA and projects funded under 23 U.S.C. 149, the CMAQ program, are projects which EPA and DOT may, after individual review of each project, find to be exempt from highway sanctions. For these projects to advance while highway sanctions are in place, the State must submit to DOT an emissions reduction analysis similar to that required under the CMAQ program. Upon receipt, DOT will forward it to EPA. The EPA will complete its review and make its finding regarding air quality and SOV capacity within 14 days of receipt of such information.

The EPA and DOT have agreed that the following projects will be categorically exempt from highway sanctions, and will not require additional EPA review or an individual finding by EPA:

a. The TCMs contained in an EPA-approved State Implementation Plan or Federal Implementation Plan which have emission reduction credit and will not encourage SOV capacity.

b. Inspection and maintenance facilities and activities eligible for CMAQ funding.

c. Bicycle and pedestrian facilities and programs.

d. Carpool/Vanpool programs.

e. Conversion of existing lanes for HOV use during peak hour periods, including capital costs necessary to restrict existing lanes (barriers, striping, signage, etc.).

In considering exempt projects, States should seek to ensure adequate access to downtown and other commercial and residential areas, and should strive to avoid increasing or relocating emissions and congestion.

4. Projects That Have a ''De Minimis'' Air Quality Impact and Provide Other Environmental or Aesthetic Benefits

The following projects are likely to have ''de minimis'' environmental or environmentally beneficial impacts, provide other aesthetic benefits, do not promote SOV capacity, and are, therefore considered exempt from highway sanctions:

a. Wetland Mitigation.

b. Planting Trees, Shrubs, Wildflowers.

c. Landscaping.

d. Purchase of Scenic Easements.

e. Billboard and Other Sign Removal.

f. Historic Preservation.

g. Transportation Enhancement Activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).

h. Noise Abatement.

Planning and Research Activities

Planning and research activities for transportation and/or air quality purposes are exempt from highway sanctions (except as noted in the Project Development Activities section). Such planning and research is critical for the development of projects that improve safety and address an area's transportation/air quality needs. Planning and research activities may include development of an Environmental Impact Study or Environmental Assessment (under NEPA) in conjunction with a major investment study. Major investment studies are planning studies which normally take a multimodal approach in considering transportation alternatives, and are therefore exempt from sanctions under this criteria.

Research activities also include those research, development, testing, and planning projects involving the National Intelligent Transportation Systems (ITS) Program funded by part B of Title 6 of the 1991 ISTEA. The goal of the ITS Program is to use advanced technology to improve travel and roadway safety without expanding existing infrastructure. The ITS activities are generally done under seven broad categories: (1) Transportation management and traveller information; (2) travel demand management; (3) public transportation operations; (4) electronic payment; (5) commercial vehicle operations; (6) emergency management; and (7) advanced vehicle control and safety systems. Therefore, planning and research activities associated with the ITS Program are also exempt from sanctions under this criteria.

Project Development Activities

Development and completion of studies to meet requirements under NEPA are exempt from highway sanctions as long as consideration of projects that would be exempt under this policy memorandum, such as transit or other Transportation Demand Management (TDM) measures, are actively pursued as reasonable independent alternatives. Once all alternatives that could be considered exempt from highway sanctions under this policy memorandum are eliminated, project development activities for NEPA or other purposes are no longer exempt and can no longer be approved or funded under Title 23. For example, if prior to completion of NEPA documentation, all TDM measures are eliminated from consideration and the sole remaining question is the determination of an alignment for a highway capacity-expanding project (which may include TDM), subsequent project development activities are not exempt from highway sanctions.

The FHWA may not approve preliminary engineering for final design of a project, nor can approval be granted for a project's plans, specifications, and estimates after initiation of highway sanctions for projects that are not exempt under this policy memorandum. Neither right-of-way nor any necessary equipment may be purchased or leased with Federal funds for nonexempt projects while an area is under sanction. Federally-funded construction may not in any way begin on a project that does

not meet the exemption criteria described in this policy memorandum while an area is under sanction.

Highway sanctions apply to those projects whose funds have not yet been obligated by FHWA by the date the highway sanction applies. Those projects that have already received approval to proceed and had obligated funds before EPA imposes the prohibition may proceed even while the area is under sanction, if no other FHWA action is required to proceed. In the case of a phased project, only those phases that have been approved and had obligated funds prior to the date of sanction application may proceed. For example, if preliminary engineering for a project was approved and funds were obligated prior to application of sanctions but no approval was secured for later project phases (such as right-of-way acquisition, construction, etc.), preliminary engineering could proceed while the highway sanction applies, but no subsequent phases of the project could proceed with FHWA funds unless the total project meets the exemption criteria in this policy memorandum. These restrictions pertain only to project development activities that are to be approved or funded by FHWA under title 23. Activities funded under title 49, U.S.C., or through State or other funds, may proceed even after highway sanctions have been imposed unless: (1) Approval or action by FHWA under title 23 is required; and (2) they do not meet the exemption criteria of this policy memorandum.

Other Environmental Requirements

Exemption of a transportation project from the section 179(b)(1) highway sanctions does not waive any applicable requirements under NEPA (e.g., environmental documents), section 176(c) of the CAA (conformity requirement), or other Federal law.

Authority: 42 U.S.C. 7509(b); 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: March 25, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–7821 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–22–M

Continuation of the Effectiveness of Interstate Commerce Commission Legal Documents

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of effectiveness of legal documents.

SUMMARY: This document gives notice of the continued effectiveness of all legal documents of the Interstate Commerce Commission (ICC) as provided for in section 204, Saving Provisions, of the ICC Termination Act of 1995. Specifically, section 204 provides that all rules and regulations of the ICC shall continue in effect past the sunset date of the ICC. Motor carriers are also notified that consolidations, mergers, and acquisitions of control of motor carriers of property are no longer subject to approval and authorization pursuant to 49 U.S.C. 11343.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Braverman, Motor Carrier Law Division, (202) 927–6316, or Ms. Grace E. Reidy, Motor Carrier Law Division, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995 (P.L. 104–88, 109 Stat. 803), effective January 1, 1996, eliminated unnecessary ICC regulatory functions and partly transferred residual functions to a newly established independent Surface Transportation Board (STB) within the DOT and partly to the Secretary of Transportation. Section 204 of the ICC Termination Act of 1995, the Saving Provisions, provides that all legal documents of the ICC that were issued or granted by an official authorized to effect such document shall continue in effect beyond the transfer of any function from the ICC to the STB or DOT.

The Saving Provisions provide, in part, that all rules of the ICC that were legally enacted by the proper official with requisite authority and which are not based upon a provision of law repealed and not substantially reenacted by the Act shall remain in effect after the ICC sunset. Moreover, such rules and regulations shall remain in effect until modified by the STB, the Secretary of Transportation or another authorized competent official. To ensure proper public notice of the continued effectiveness of such regulations, the current regulations issued by the previously existing ICC shall remain in effect until further action is taken to change the applicability and/or requirements of such regulations. Motor carriers are also notified that consolidations, mergers, and acquisitions of control of motor carriers of property are no longer subject to approval and authorization pursuant to 49 U.S.C. 11343. Section 11343 is a provision that was found in the repealed statute and was not revived or continued by the ICC Termination Act of 1995.

(23 U.S.C. 315; 49 CFR 1.48, Pub. L. 104–88, sec. 204.)

Issued on: March 25, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–7825 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–22–P

Surface Transportation Board [1]

[STB Finance Docket No. 32866] [2]

Rail Link, Incorporated; Continuance in Control Exemption; Talleyrand Terminal Railroad Company, Inc.

Rail Link, Incorporated (Rail Link), has filed a verified notice under 49 CFR 1180.2(d)(2) to continue in control of the Talleyrand Terminal Railroad Company, Inc. (TTRC) upon TTRC becoming a Class III rail carrier. The transaction was to have been consummated on or after February 14, 1996.

TTRC, a noncarrier, has concurrently filed a notice of exemption in STB Finance Docket No. 32865, *Talleyrand Terminal Railroad Company, Inc.—Operation Exemption—Lines of Municipal Docks Railway,* in which TTRC seeks to operate approximately 10 miles of rail line owned by Municipal Docks Railway in Duval County, FL.

Rail Link also controls two nonconnecting Class III rail carriers: (1) The Commonwealth Railway, Incorporated and the Carolina Coastal Railway, Inc. (CCR).[3]

The transaction is exempt from the prior approval requirements of 49 U.S.C. 11323 because Rail Link states that: (1) The railroads will not connect with each other or with any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

[2] A notice in this proceeding was previously served by the Board and published in the Federal Register on March 8, 1996. A corrected notice is being issued because the earlier notice imposed labor protective conditions that the Board may no longer impose under the ICC Termination Act for transactions such as this one that are the subject of notices of exemption filed after the January 1, 1996 effective date of that Act.

[3] See *Rail Link Corporated—Continuance in Control Exemption—Commonwealth Railway Incorporated,* Finance Docket No. 31531 (ICC served Sept. 15, 1989).