

(RNAV (GPS)) Runway (RWY) 03, Amendment (Amdt) 1; and (2) RNAV (GPS) RWY 21, Amdt 1. This action would modify the Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface near the Huslia Airport. The proposed airspace is sufficient in size to contain aircraft executing instrument procedures at the Huslia Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Huslia Airport and represents the FAA’s continuing effort

to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Huslia, AK [Revised]

Huslia Airport, AK
(Lat. 65°41′52″ N., long. 156°21′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Huslia Airport, and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of the Huslia Airport.

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Issued in Anchorage, AK, on March 28, 2006.

Michael A. Tarr,

Manager, Operations Support.

[FR Doc. E6–4896 Filed 4–4–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 773

[FHWA Docket No. FHWA–05–22707]

RIN 2125–AF13

Surface Transportation Project Delivery Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

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

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established a pilot program to allow the Secretary to assign and the State to assume the Secretary’s responsibilities under the National Environmental Policy Act (NEPA) for one or more highway projects. The Secretary may permit not more than five States (including the States of Alaska, California, Ohio, Oklahoma, and Texas) to participate in the program. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary’s responsibilities for environmental review, consultation or other action required under any Federal environmental law pertaining to the review of a specific project. In order to be selected for the pilot program a State must submit an application to the Secretary. Section 6005 requires the Secretary to promulgate rules that establish requirements relating to information required to be contained in an application by a State to participate in the pilot program. This proposed rule is intended to provide the application requirements.

DATES: Comments must be received on or before June 5, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>, or fax comments to (202) 493–2251.

Alternatively, comments may be submitted to the Federal eRulemaking portal at <http://www.regulations.gov>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through

Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Development and Environmental Review, HEPE, 202–366–2034 or Mr. Michael Harkins, Office of the Chief Counsel, 202–366–4928, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. Alternatively, internet users may access all comments received by the DOT Docket Facility by using the universal resource locator (URL) <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: <http://www.archives.gov> or the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

Background

Section 6005 of the SAFETEA–LU (Pub. L. 109–59, 119 Stat. 1144), codified at 23 U.S.C. 327, established a pilot program that allows the Secretary to assign up to five States, including Oklahoma, Texas, Alaska, California, and Ohio, the responsibilities of the Secretary (FHWA) for implementation of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) for one or more highway projects. Upon assumption of NEPA responsibilities, a State may also be assigned all or part of FHWA's responsibilities for environmental review, consultation or

other action required under any Federal environmental law pertaining to the review or approval of highway projects. Whenever a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and solely liable for carrying out, in lieu of FHWA, the responsibilities it has assumed, including coordination and resolution of issues with Federal environmental resource and regulatory agencies and responding to litigation. In order to participate in this pilot program, a State transportation department (STD) must submit an application. Section 327 of chapter 23, U.S. Code requires that rules be promulgated to establish requirements for information to be contained in this application. This notice proposes, and requests comments on, the regulations concerning the information to be contained in an application.

Under the proposed regulations, an STD would be required to identify, in its application, which Federal environmental laws it wants to assume under the program. In accordance with 23 U.S.C. 327, the STD must assume NEPA responsibilities prior to assuming the responsibilities for any other Federal environmental law. A list of the other Federal environmental laws for which an STD may request assumption of FHWA's responsibilities is provided in Appendix A to the proposed regulations. While this list is not intended to be exhaustive, the FHWA does not intend to delegate any responsibilities that are not inherently environmental, such as Interstate access approvals. Appendix A contains those laws that the FHWA has determined to be inherently environmental and, thus, may be assumed by an STD under this program. With respect to laws that are not included in Appendix A, the FHWA will make a determination as to whether they may be assumed upon request by an STD in its application. Additionally, although laws dealing with government to government consultation with Indian tribes are listed in Appendix A, a State may administer these responsibilities only if the State has an agreement with the tribe which specifically provides for such consultation. The FHWA specifically requests comments on the list of laws that may be assumed by an STD under this program.

Furthermore, the STD would be required to identify the highway projects, or classes of highway projects, for which the STD wants to assume environmental responsibilities. There is flexibility in the range of projects that STDs may request be included under this pilot program (for example, one

highway project, all highway projects, or all highway projects in a particular district of an STD, only categorical exclusions (CE) and environmental assessment (EA)/findings of no significant impact (FONSI), etc.) as well as the range of environmental laws that may be assumed. Also, the proposed rule requires each applicant STD to submit a statement of how it proposes to meet the requested responsibilities. This will require an assessment by the STD of its current staffing and expertise, its organizational structure, and environmental procedures. This assessment should also provide baseline information with respect to current environmental timeframes and the staffing and organizational costs presently incurred by the STD to complete a document that complies with both the FHWA's and the Council on Environmental Quality's (CEQ) NEPA regulations, as well as other related environmental laws. There is also a requirement to provide a proposed budget that estimates the additional financial resources needed to assume the requested responsibilities and identifies the source of funds for the additional expenses.

A final part of the proposed application would require that the STD provide the public notice of its intent to participate in the program and solicit comments. Section 327 of title 23, United States Code provides that this is to be done by the STD publishing its application in accordance with the appropriate public notice law of the State not later than 30 days prior to submitting the application to FHWA. Comments received from the public must be submitted along with the application. Following approval of the application, the STD must enter into a written agreement or Memorandum of Understanding (MOU) with the FHWA.

General Discussion of the Proposals

Section-by-Section Discussion of the Proposals

Section 773.102 Applicability

This section provides that these proposed rules apply to any STD that submits an application for participation in the program.

Section 773.103 Definitions

The specific terms that have special significance to an application under the pilot program are defined in this section. The FHWA proposes to define "highway projects" in a flexible manner to encompass a variety of scenarios. Specifically, all projects involving the construction of a highway, bridge, or tunnel that is eligible for assistance

under title 23, United States Code, are intended to be included in this definition. Also, this definition includes anything that may be constructed within the right of way, or otherwise in connection with a highway, bridge, or tunnel, such as pedestrian and/or bicycle facilities or bus accommodations. Certain types of projects funded under the STP Transportation Enhancements Program or under the Congestion Mitigation and Air Quality Improvement Program (CMAQ) may also be considered highway projects if they are included as part of the construction of a highway, bridge or tunnel.

However, this definition specifically excludes certain types of projects. Firstly, this definition excludes planned multi-modal projects. Since these projects involve the transportation interests of agencies other than the FHWA, as well as features that are not unique to highways, the FHWA proposes to define "highway project" to exclude those projects that are intended at project conception to be multi-modal. A project is a planned multi-modal project if it is identified as a multi-modal project through the transportation planning process, or by the action of the Congress, a State governor, or State legislature. Further, projects funded under chapter 53, title 49, United States Code are also excluded from the definition of a highway project. The exclusion of projects intended to be multi-modal or funded under chapter 53 of title 49, United States Code from the definition of a highway project is in no way intended to influence the range of reasonable alternatives, including those involving other modes, which must be analyzed under NEPA for a highway project. The FHWA specifically requests comment on the decision to exclude planned multimodal projects from this definition.

Secondly, the FHWA intends to exclude projects designated as priority projects under Executive Order 13274 (September 18, 2002) because the environmental review and coordination of these projects have national policy implications.

Thirdly, highway projects that are Federal Lands Highway projects are excluded from this pilot program. These are Federal projects and they are constructed on Federal land. Unlike Federal-aid highway projects, the STD is neither the owner of the project nor the government agency charged with responsibility for design and construction of the projects.

Lastly, the FHWA intends to limit the highway projects for which Federal

environmental responsibilities may be assumed to those where the FHWA has not yet released a draft environmental impact statement (DEIS). The FHWA is proposing this limitation because it is important for this pilot to have a set of projects that can be measured to determine the full effect of assigning FHWA's environmental responsibilities to the STDs. Selecting a set of projects that have already had significant FHWA involvement does not seem to present a clear picture of the STDs' success in managing the Federal environmental responsibilities it is assuming. Further, it seems that this change of authority in the mid-course of project development could be a source of frustration to the public and other agencies. However, an STD may assume the FHWA responsibilities for re-evaluations, and the appropriate environmental review responsibilities that may result from such re-evaluation, even if the FHWA made the initial determination. The FHWA specifically requests comments with respect to the proposal to exclude projects for which the FHWA has released a DEIS.

Section 773.104 Eligibility

Only an STD of a State is eligible to apply for participation in this program. If a State wishes to assume responsibilities for highway projects involving localities or other State entities, such as independent tolling authorities, then such responsibilities must be carried out through the STD. Also, 23 U.S.C. 327 provides that not more than five States, including the States of Alaska, California, Ohio, Oklahoma, and Texas, may apply. If one or more of the identified States does not apply, have their participation terminated, or withdraw from the pilot program, another STD may be selected.

Section 773.105 Application Requirements

This section establishes the proposed application requirements that must be met in order to participate in this program.

Under § 773.105(b)(1) of the application, an STD would be required to identify the particular highway projects for which it is requesting to assume FHWA's responsibilities under NEPA. This identification should indicate the project(s) termini, length and estimated cost. The STDs requesting multiple projects or classes of projects may wish to utilize an annotated or highlighted version of their current State Transportation Improvement Program (STIP) document to provide this information. Other methods that

provide the needed information are also acceptable.

Under proposed § 773.105(b)(2), the STD would be required to submit a list of the responsibilities it wishes to assume under other Federal environmental laws. Section 327 of title 23, United States Code, indicates that any environmental responsibilities not specifically requested and specifically assigned by the Secretary will be retained by the FHWA. We would note that FHWA now documents its compliance with many of these laws as part of the NEPA process. Thus, should a State choose to assume responsibility for only a part of these legal requirements, FHWA may have to separately document compliance with any requirement for which it remains responsible. In order to assist the STDs in dealing with this requirement, the FHWA has developed a list of Federal environmental laws that may apply to highway projects. The list is not considered all encompassing and STDs are encouraged to carefully review their experience to determine if there are additional Federal environmental laws that have applied to their projects in the past. As indicated above, an STD must assume NEPA in order to assume other responsibilities.

Under proposed § 773.105(b)(3), the STD would be required to submit a philosophical/policy statement of the STD's goals and guiding principles in making environmental decisions under the program. The STD may choose to add, as appropriate, a statement and specification of its comparative advantage(s) in making environmental decisions under this program.

Under proposed § 773.105(b)(4), the STDs would be required to submit a description of how they propose to implement the new responsibilities they are requesting to be assigned under the program. This description is extremely important because it forms the basis for the discussions of personnel capacity, expertise and financial resources that follow in §§ 773.105(b)(5) and 773.105(b)(6). This description should cover any existing State law which creates a NEPA-like process, the STDs own written environmental procedures, an assessment of current staff capabilities and a discussion of changes that the STD proposes to make or has made in order to assure the FHWA that the STD has the necessary staff, procedures and organizational structure to carry out the responsibilities being requested. The FHWA is particularly interested in a demonstration by the STD that appropriate checks and balances are in place to assure unbiased decisionmaking and that all applicable

provisions of Federal environmental laws, regulations, and processes have been met prior to concluding the NEPA process.

Under § 773.105(b)(5) the FHWA proposes that each applicant State demonstrate that it has the necessary personnel to assume the responsibilities it requests by providing its own assessment of its current staffing, expertise, and organizational structure as well as an analysis of changes it will need to make (e.g., added staff, more training in particular areas, changes in organizational structure which may be needed to support additional responsibilities in quality control and assurance and insure an unbiased NEPA decisionmaking process). This discussion should specifically include how the STD intends to provide for legal sufficiency reviews required by 23 CFR 771.125(b) and describe how the STD intends to identify and address the types of actions listed in 23 CFR 771.125(c)(1).

Under § 773.105(b)(6) the FHWA proposes that the STD submit a proposed budget that shows a detailed estimate of the additional funding that is anticipated in order to meet the staffing, training, quality assurance and quality control process, and any organizational re-structuring that may be needed to assume the duties requested and to provide the needed program checks and balances. Since the statute requires a verification of financial resources, the FHWA has included a requirement that the STD identify the funding sources for additional needs and verify that the identified funding is available for the listed activities.

Section 773.105(b)(7) would require a certification from the State Attorney General, or other State official legally empowered under State laws, that the STD can and will assume the responsibilities of the Secretary for the laws and projects requested and will consent to exclusive Federal Court jurisdiction with respect to the assumption of these responsibilities. Because the STD is assuming the responsibilities of the Secretary, this consent to Federal Court jurisdiction must be sufficiently broad to include general changes in applicable requirements made after the consent to Federal Court jurisdiction or be subject to subsequent amendment. Section 773.105(b)(8) further requires that a certification be made concerning whether the State has laws comparable to the Federal Freedom of Information Act (5 U.S.C. 552) as well as laws that allow for any decision regarding the public availability of a document to be

reviewed by a court of competent jurisdiction.

Section 773.105(b)(9) closely parallels the language of the statute with respect to public notice and solicitation of comments (23 U.S.C. 327(b)(3)). The FHWA proposes adding a requirement for STDs to summarize the comments received and to note if any changes have been made to the application in response to public comments. Although this proposed rule only requires the publication of the application, the STDs are encouraged to consult with the public, Federal resource agencies, and other stakeholders in the development of their applications.

Section 773.105(c) would provide that the application be signed by the Governor or the head of the State agency having primary jurisdiction over highway matters. This section also requires the STD to identify a point of contact for questions regarding the application.

Section 773.106 Application Approval

Section 773.106 indicates that the next step following approval of the STDs application would be the development of a written agreement or memorandum of understanding between the STD and the FHWA.

Section 773.107 Application Amendments

Section 773.107 would provide a process for amending an application submitted under this program to allow STD's to request assumption of NEPA and environmental responsibilities for additional projects.

Rulemaking Analyses and Notices

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

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

The FHWA has determined preliminarily that this action would be a significant rulemaking action within the meaning of Executive Order 12866

and would be significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This rulemaking proposes application requirements for the Surface Transportation Project Delivery Program as mandated in section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59; 119 Stat. 1144; 23 U.S.C. 327).

This action is considered significant because of the substantial public interest in environmental concerns associated with highway projects. The program to which this proposed application corresponds allows States to assume the Secretary of Transportation's responsibilities under the National Environmental Policy Act of 1969, and for environmental reviews, consultations, and compliance with other Federal environmental laws. This proposed action involves important DOT policy in that it allows participating States to assume limited DOT responsibilities.

These proposed changes are not anticipated to adversely affect, in a material way, any sector of the economy. This rulemaking sets forth application requirements for the Surface Transportation Project Delivery Pilot Program, which will result in only minimal costs to program applicants. In addition, these proposed changes would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

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

The proposed rule addresses application requirements for States wishing to participate in the Surface Transportation Project Delivery Program. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector. Additionally, the definition of "Federal Mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

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

Under this pilot program, a selected State may voluntarily assume the responsibilities of the Secretary for implementation of the National Environmental Policy Act for one or more highway projects. Upon a State's voluntary assumption of NEPA responsibilities, a State may also choose to be assigned all or part of FHWA's responsibilities for environmental review, consultation or other action required under any Federal environmental law pertaining to the review or approval of highway projects. It is expected that a State will choose to assume these Federal agency responsibilities in those cases where the State believes that such an action would enable the State to streamline highway project development and construction. The assumption of these Federal agency responsibilities would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. Any

federalism implications arising from the States' assumption of Federal agency responsibilities are attributable to SAFETEA-LU section 6005. Any change in the relative role of the State is consistent with section 2(a) and 3(c) of E.O. 13132 in that the national government is granting to the States the maximum administrative discretion possible.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA. The FHWA does not anticipate receiving applications from ten or more States because participation in the Surface Transportation Project Delivery Pilot Program has been limited to five, expressly named States in 23 U.S.C. 327.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that the establishment of the application requirements for participation in the Surface Transportation Project Delivery Pilot Program, as required by Congress in 23 U.S.C. 327(b)(2) and the subsequent delegation of responsibilities, would not have any effect on the quality of the environment. Section 327 expressly provides that a State's assumption of the Secretary's responsibilities under this program shall be "subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary." 23 U.S.C. 327(a)(2)(C). In addition, this State assumption of responsibility does not preempt or interfere "with any power, jurisdiction, responsibility, or authority of an agency, other than the U.S. Department of Transportation, under applicable law

(including regulations) with respect to a project." 23 U.S.C. 327(a)(2)(E). Finally, the Secretary is authorized to terminate the participation of any State in this program if the Secretary determines "that the State is not adequately carrying out the responsibilities assigned to the State." 23 U.S.C. 327(i)(2)(A).

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause any environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses application requirements for the Surface Transportation Project Delivery Program and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001.

We have determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 773

Environmental protection, Highway project, Highways and roads.

Issued on: March 30, 2006.

J. Richard Capka,

Acting Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to add a new part 773 to title 23, Code of Federal Regulations, to read as follows:

PART 773—SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM

Sec.

- 773.101 Purpose.
- 773.102 Applicability.
- 773.103 Definitions.
- 773.104 Eligibility.
- 773.105 Application requirements for participation in the program.
- 773.106 Application approval
- 773.107 Application amendments
- Appendix A to Part 773—FHWA Environmental Responsibilities that may be Assigned Under Section 6005

Authority: 23 U.S.C. 315 and 327.

§ 773.101 Purpose.

The purpose of this part is to establish the requirements, as directed by 23 U.S.C. 327(b)(2), relating to the information which must be contained in an application by a State to participate in the program allowing the Secretary to assign, and a State Transportation Department (STD) to assume, responsibilities for compliance with the National Environmental Policy Act (42 U.S.C. 4321–4347) and other Federal environmental laws pertaining to the review or approval of a highway project(s).

§ 773.102 Applicability.

This part applies to any STD eligible under the provisions of 23 U.S.C. 327 that submits an application for participation in the program.

§ 773.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Classes of highway projects means either a defined group of highway projects or all highway projects to which Federal environmental laws apply.

Federal environmental law means any Federal law under which the Secretary of the United States Department of Transportation has responsibilities for environmental review, consultation, or other action with respect to highway projects. A list of the Federal environmental laws for which a STD may assume the responsibilities of the Secretary under this pilot program include, but are not limited to, the list of laws contained in appendix A to this part. But, under 23 U.S.C. 327(a)(2)(B), the Secretary's responsibility for conformity determinations required under section 176 of the Clean Air Act (42 U.S.C. 7506) and the responsibility imposed on the Secretary under 23 U.S.C. 134 and 135 are not included in the program. Also, Federal environmental law includes only laws that are inherently environmental and does not include responsibilities such as Interstate access approvals (23 U.S.C. 111).

Highway project means any undertaking to construct (including initial construction, reconstruction, replacement, rehabilitation, restoration, or other improvements) a highway, bridge, or tunnel, or any portion thereof, including environmental mitigation activities, which is eligible for assistance under title 23 of the United States Code. A highway project may include an undertaking that involves a series of contracts or phases, such as a corridor, and also may include anything that may be constructed in connection with a highway, bridge, or tunnel. However, the term highway project does not include any of the priority projects designated under Executive Order 13274, does not include Federal Lands projects, does not include undertakings that are planned as multi-modal, does not include projects that are funded under chapter 53 of title 49, United States Code, and does not include those undertakings for which a draft environmental impact statement has been issued by the FHWA. Nothing in this part is intended to limit the consideration of any alternative in conducting an environmental analysis under any Federal environmental law, even if the particular alternative would provide for a project that is excluded under this section.

Program means the "Surface Transportation Project Delivery Program" established under 23 U.S.C. 327, which allows up to five STDs to assume all or part of the responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of one or more highway projects.

§ 773.104 Eligibility.

(a) Only a STD of a State is eligible to participate in the program.

(b) The program is limited to a maximum five STDs, including the STDs of Alaska, California, Ohio, Oklahoma and Texas as the five participant States. Should any of these five STDs choose not to apply, have its participation terminated, or withdraw from the pilot program, another STD may be selected.

§ 773.105 Application requirements for participation in the program.

(a) Each STD wishing to participate in the program must submit an application to the FHWA.

(b) Each application submitted to the FHWA must contain the following information:

(1) The highway project(s) or classes of highway projects for which the State is requesting to assume FHWA's responsibilities under NEPA;

(2) The specific responsibilities for the environmental review, consultation, or other action required under other Federal environmental laws, if any, pertaining to the review or approval of a highway project, or classes of highway projects, that the STD wishes to assume under this program. The STD must also indicate whether it proposes to phase-in the assumption of these responsibilities;

(3) A philosophical/policy statement of the STD's goals and guiding principles in making environmental decisions under the authority the STD is seeking under this program, especially with respect to Section 101 of NEPA (42 U.S.C. 4321–43351);

(4) For each responsibility requested in paragraphs (b)(1) and (b)(2) of this section, the STD shall submit a description in the application detailing how it intends to carry out these responsibilities. The description shall include:

(i) An identification of existing environmental and managerial expertise possessed by the STD to meet the responsibilities;

(ii) A summary of State procedures currently in place to guide the development of documents, analyses and consultations required to fulfill the environmental responsibilities

requested. The actual procedures should be submitted with the application, or if available electronically, the weblink must be provided;

(iii) Any changes that have been or will be made in the management of the environmental program to provide the additional staff and training necessary for quality control and assurance, appropriate levels of analysis, adequate expertise in areas where responsibilities have been requested, and expertise in management of the NEPA process;

(iv) A discussion of how the STD will verify legal sufficiency for the environmental document it produces; and

(v) A discussion of how the STD will identify and address those projects that would normally require FHWA headquarters prior concurrence of the FEIS under 23 CFR 771(c).

(5) A verification of the personnel necessary to carry out the authority that may be granted under the program. The verification shall contain the following information:

(i) A description of the staff positions that will be dedicated to providing the additional functions needed to accept the delegated responsibilities;

(ii) A description of any changes to the STD's organizational structure that are deemed necessary to provide for efficient administration of the responsibilities assumed; and

(iii) A discussion of personnel needs that may be met by the STD's use of outside consultants, including legal counsel provided by the State Attorney General or private counsel;

(6) A budget that covers additional activities and staffing needs identified in (b)(3) and (b)(4) of this section. The budget must include:

(i) The anticipated additional costs of meeting the environmental responsibilities for which delegation has been requested;

(ii) The costs associated with activities including, but not limited to, resolution of issues with other Federal agencies, quality control/quality assurance of documents and analysis, legal sufficiency reviews;

(iii) The anticipated costs of Federal court litigation;

(iv) Identification of the funding sources for these additional costs; and

(v) A separate verification that the identified funding is available for the listed activities;

(7) Certification and explanation by State's Attorney General, or other State official legally empowered by State law, that the STD can and will assume the responsibilities of the Secretary for the Federal environmental laws and projects requested and that the STD will

consent to exclusive Federal Court jurisdiction with respect to the responsibilities being assumed. Such consent must be broad enough to include future changes in relevant Federal policies and procedures to which FHWA would be subject or such consent would be amended to include such future changes;

(8) Certification by the State's Attorney General, or other State official legally empowered by State law, that the State has laws that are comparable to the Federal Freedom of Information Act (5 U.S.C. 552), including laws that allow for any decision regarding the public availability of a document under those laws to be reviewed by a court of competent jurisdiction; and

(9) Evidence that the required notice and solicitation of public comment by the STD relating to participation in the program has taken place. Requirements for notice and solicitation of public comments are as follows:

(i) Not later than 30 days prior to submitting its application, a State must give notice that the State intends to participate in the program and solicit public comment by publishing a current draft of the complete application of the State in accordance with the appropriate public notice law of the State, and

(ii) Copies of all comments received shall be submitted with the application. The State should summarize the comments received, and note changes, if any, that were made in the application in response to public comments.

(c) The application shall be signed by the Governor or the head of the State agency having primary jurisdiction over highway matters. The application must also identify a point of contact for questions regarding the application. Applications may be submitted in electronic format.

§ 773.106 Application approval.

If an STD's application is approved, then the STD will be invited to enter into a written Memorandum of Understanding (MOU) with the FHWA, as provided in 23 U.S.C. 327. None of FHWA's responsibilities under NEPA or other environmental laws may be assumed by the STD prior to execution of the MOU.

§ 773.107 Application amendments.

(a) After an STD submits its application to the FHWA, but prior to the execution of a memorandum of understanding, the STD may amend its application at any time to request additional highway projects, classes of highway projects, or more environmental responsibilities. However, prior to amending any such

application, the STD must provide notice and solicit public comments with respect to the intended amendments. In submitting the amendment to the FHWA, the STD must provide copies of all comments received and note the changes, if any, that were made in response to the comments.

(b) A STD may amend its application no earlier than one year after a memorandum of understanding has been executed to request additional highway projects, classes of highway projects, or more environmental responsibilities. In amending its application, the STD must provide notice and solicit public comments with respect to the intended amendments. In submitting the amendment to the FHWA, the STD must provide copies of all comments received and note the changes, if any, that were made in response to the comments.

Appendix A to Part 773—FHWA Environmental Responsibilities That May Be Assigned Under Section 6005

Federal Procedures

National Environmental Protection Act (NEPA), 42 U.S.C. 4321–43351
FHWA Environmental Regulations at 23 CFR part 771, 772 and 777
CEQ Regulations at 40 CFR 1500–1508
Clean Air Act, 42 U.S.C. 7401–7671(q). *Any determinations that do not involve conformity*

Noise

Compliance with the noise regulations at 23 CFR part 772

Wildlife

Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and Section 1536
Marine Mammal Protection Act, 16 U.S.C. 1361
Anadromous Fish Conservation Act, 16 U.S.C. 757(a)–757(g)
Fish and Wildlife Coordination Act, 16 U.S.C. 661–667(d).
Migratory Bird Treaty Act, 16 U.S.C. 703–712
Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Historic and Cultural Resources

*Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(f) *et seq.*
Archeological Resources Protection Act of 1977, 16 U.S.C. 470(aa)–11
Archeological and Historic Preservation Act, 16 U.S.C. 469–469(c)
*Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013

Social and Economic Impacts

*American Indian Religious Freedom Act, 42 U.S.C. 1996
Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

Water Resources and Wetlands

Clean Water Act, 33 U.S.C. 1251–1377
 Section 404
 Section 401
 Section 319
 Coastal Barrier Resources Act, 16 U.S.C.
 3501–3510
 Coastal Zone Management Act, 16 U.S.C.
 1451–1465
 Land and Water Conservation Fund (LWCF),
 16 U.S.C. 4601–4604
 Safe Drinking Water Act (SDWA), 42 U.S.C.
 300(f)–300(j)(6)
 Rivers and Harbors Act of 1899, 33 U.S.C.
 401–406
 Wild and Scenic Rivers Act, 16 U.S.C. 1271–
 1287
 Emergency Wetlands Resources Act, 16
 U.S.C. 3921, 3931
 TEA–21 Wetlands Mitigation, 23 U.S.C.
 103(b)(6)(m), 133(b)(11)
 Flood Disaster Protection Act, 42 U.S.C.
 4001–4128

Parklands

Section 4(f) of the Department of
 Transportation Act of 1966, 49 U.S.C. 303

Hazardous Materials

Comprehensive Environmental Response,
 Compensation, and Liability Act
 (CERCLA), 42 U.S.C. 9601–9675
 Superfund Amendments and Reauthorization
 Act of 1986 (SARA)
 Resource Conservation and Recovery Act
 (RCRA), 42 U.S.C. 6901–6992(k)

Land

Landscaping and Scenic Enhancement
 (Wildflowers), 23 U.S.C. 319

Executive Orders Relating to Highway Projects

The following is a list of Executive Orders that apply to Highway Projects. STDs assuming FHWA's lead agency responsibilities under NEPA will be required to comply with these Executive Orders as a condition of application approval.

E.O. 11990 Protection of Wetlands
 E.O. 11988 Floodplain Management
 E.O. 12898 Federal Actions to Address
 Environmental Justice in Minority
 Populations and Low Income Populations
 *E.O. 11593 Protection and Enhancement of
 Cultural Resources
 *E.O. 13007 Indian Sacred Sites
 E.O. 13287 Preserve America
 *E.O. 13175 Consultation and Coordination
 with Indian Tribal Governments
 E.O. 11514 Protection and Enhancement of
 Environmental Quality
 E.O. 13112 Invasive Species

*These laws and Executive Orders involve FHWA's responsibilities for government to government tribal consultation. These responsibilities may only be administered by the STD if the tribe consents to consultation with the STD through a formally signed MOU or agreement.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 51 and 93**

[EPA–HQ–OAR–2004–0491; FRL–8055–4]

RIN 2060–AN60

PM_{2.5} De Minimis Emission Levels for General Conformity Applicability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to amend its regulations relating to the Clean Air Act (CAA) requirement that Federal actions conform to the appropriate State, Tribal or Federal implementation plan for attaining clean air (“general conformity”) to add de minimis emissions levels for particulate matter with an aerodynamic diameter equal to or less than 2.5 microns (PM_{2.5}) National Ambient Air Quality Standards (NAAQS) and its precursors.

DATES: Comments must be received by May 5, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0491, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- E-mail: A-and-R-Docket@epa.gov, attention Docket No. EPA–HQ–OAR–2004–0491.
- Fax: 202–566–1741.
- Mail: PM_{2.5} De Minimis Emission Levels for General Conformity Applicability, Docket ID No. EPA–HQ–OAR–2004–0491, Environmental Protection Agency Docket Center, Mail Code: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies, if possible. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

• Hand Delivery: PM_{2.5} De Minimis Emission Levels for General Conformity Applicability, Docket ID No. EPA–HQ–OAR–2004–0491, Environmental Protection Agency Docket Center, EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct comments to Docket ID No. EPA–HQ–OAR–2004–0491. The EPA's policy is that all

comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Coda, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail