

consultation under the Unfunded Mandates Reform Act of 1995.

#### *Federalism Impact Statement*

The Secretary has also reviewed this Interim Final Rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have “federalism implications.” The Interim Final Rule would not have “substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

#### *Impact on Family Well-Being*

This Interim Final Rule will not adversely affect the following family elements of family well-being: family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999. As stated above, this Interim Final Rule will modify the Table included in the regulations governing the VICP based on legal authority.

#### **Impact of the New Rule**

This Interim Final Rule is technical in nature and will not prevent otherwise eligible individuals with claims of injuries or deaths allegedly resulting from rotavirus vaccines (including vaccines containing live, oral, rhesus-based rotavirus) from filing claims with the VICP.

#### *Paperwork Reduction Act*

This rule has no information collection requirements.

#### **List of Subjects in 42 CFR Part 100**

Biologics, Health insurance, and Immunization.

Dated: July 30, 2007.

**Elizabeth M. Duke,**  
Administrator, HRSA.

Approved: June 23, 2008.

**Michael O. Leavitt,**  
Secretary, HHS.

**Editorial Note:** This document was received in the Office of the Federal Register on Monday, October 6, 2008.

■ Accordingly, 42 CFR part 100 is amended as set forth below.

### **PART 100—VACCINE INJURY COMPENSATION**

■ 1. The authority citation for 42 CFR part 100 continues to read as follows:

**Authority:** Sec. 215 of the PHS Act (42 U.S.C. 216); secs. 312 and 313 of Public Law 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note); sec. 2114(c) and (e) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645–646 (42 U.S.C. 300aa–14(c) and (e)); sec. 904(b) of Public Law 105–34, 111 Stat. 873; sec. 1503 of Public Law 105–277, 112 Stat. 2681–741; and sec. 523(a) of Public Law 106–170, 113 Stat. 1927–1928.

#### **§ 100.3 [Amended]**

■ 2. Section 100.3 is amended as follows:

■ A. In paragraph (a) in the Vaccine Injury Table remove Item XII and redesignate Items XIII and XIV as XII and XIII respectively.

■ B. In paragraph (c)(3) remove the second sentence; in paragraph (c)(4) remove the words “(Item XIII of the Table)” and add in their place “(Item XII of the Table)”; in paragraph (c)(5) remove the words “(Item XIV of the Table)” and add in their place “(Item XIII of the Table)”.

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### **DEPARTMENT OF TRANSPORTATION**

#### **Maritime Administration**

#### **46 CFR Part 393**

[Docket No. MARAD–2008 0096]

**RIN 2133–AB70**

#### **America’s Marine Highway Program**

**AGENCY:** Maritime Administration, DOT.  
**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The purpose of this interim final rule is to solicit recommendations for short sea transportation routes to be designated as Marine Highway Corridors and to solicit applications from interested parties to participate in a short sea transportation Project, as required by section 55605(c) of Public Law 110–140, the Energy Independence and Security Act of 2007. Section 55601(d) specifically states, that “[t]he Secretary may designate a project to be a short sea transportation project if the Secretary determines that the project may—offer a waterborne alternative to available landside transportation services using documented vessels; and provide transportation services for passengers or freight (or both) that may reduce congestion on landside

infrastructure using documented vessels.” Further, section 55605 defines short sea transportation as meaning “the carriage by vessel of cargo that is contained in intermodal cargo containers and loaded by crane on the vessel or loaded on the vessel by means of wheeled technology; and that is loaded at a port in the United States and unloaded either at another port in the United States or at a port in Canada located in the Great Lakes Saint Lawrence Seaway System; or loaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System and unloaded at a port in the United States.” Section 55605(c) directs the Secretary of Transportation to promulgate interim regulations not later than 90 days after the date of enactment of this Act. The Secretary of Transportation will delegate authority to the Maritime Administrator to administer this program. Final regulations are to be issued no later than October 1, 2008. The program established in Section 55605 will be titled “America’s Marine Highway Program.” A final regulation will be published following this public comment period. Solicitations from applicants desiring Marine Highway Project designation will be initiated through notification in the **Federal Register** at a future date.

#### **DATES:**

The effective date of this interim regulation is November 10, 2008. Any further comments are due by February 6, 2009.

**ADDRESSES:** You may submit comments [identified by DOT Docket Number MARAD–2008–0096] by any of the following methods:

- **Web Site:** <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room PL–401, Washington, DC 20590–0001.
- **Hand Delivery:** Room PL–401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.
- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All submissions must include the agency name and docket number for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided. Please

see the Privacy Act heading under Regulatory Notices.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room PL-401 of the Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:**

Michael Gordon, Office of Intermodal System Development, Marine Highways and Passenger Services, at (202) 366-5468, via e-mail at [michael.gordon@DOT.gov](mailto:michael.gordon@DOT.gov), or by writing to the Office of Marine Highways and Passenger Services, MAR-520, Suite W21-315, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Background**

Congestion is one of the single largest threats to America's economic prosperity and way of life. Overall, the Department of Transportation estimates that congestion on our roads, bridges, railways, and in certain ports costs the United States as much as \$200 billion a year and this figure will continue to grow. In addition to significant existing congestion, an increasing growth in trade will place even more demands on our capability to move freight and people through an already strained transportation network.

Over the next 15 years, experts project that cargoes moving through our ports will nearly double. Federal Highway Administration, "The Freight Story: A National Perspective on Enhancing Freight Transportation". Most of this additional cargo will ultimately move along our surface transportation corridors, many of which are already at or beyond capacity. Since 92 percent of all domestic freight currently moves on road and rail infrastructure, the implications of this growth are significant. U.S. Department of Transportation "Freight Analysis Framework".

The challenge we face is to use all transportation modes available to address the looming crisis. America's Marine Highway can be a viable alternative transportation mode. Expanding the Marine Highway can be cost effective and will require less new infrastructure than surface transportation alternatives, represents significant fuel savings, while offering a resilient and redundant means of transportation. The Marine Highway, consisting of more than 25,000 miles of inland, intracoastal, and coastal

waterways, already transports about 1 billion tons of domestic cargo annually, and has considerable room to grow. U.S. Army Corps of Engineers, "Waterborne Commerce of the United States" (2005). The following is an example of the benefit the Marine Highway can offer. An East Coast container-on-barge operation that currently runs between Baltimore, MD, and Norfolk, VA, relieves the busy I-95 and I-64 corridors of almost 2,000 trucks every week. That is equal to 3 lanes of bumper-to-bumper trucks eight miles long for about 1/3 the amount of fuel. Transporting freight by water has traditionally been used for the movement of bulk commodities such as coal, petroleum, grain, and lumber, yet growing freight congestion on certain highway Corridors, combined with innovative approaches, could encourage shippers to consider marine transportation for container cargo.

In many cases, the Marine Highway runs parallel to some of the most congested highway Corridors in the country. On September 10, 2007, the Department of Transportation announced six interstate routes as Corridors of the Future: I-95 from Florida to the Canadian border; I-70 in Missouri, Illinois, Indiana, and Ohio; I-15 in Arizona, Utah, Nevada, and California; I-5 in California, Oregon, and Washington, I-10 from California to Florida, and I-69 from Michigan to Texas. The designation of waterways along some of these and other clogged roadways and rail routes as Marine Highway Corridors could reduce congestion, pollution, and energy usage, increase freight system reliability, and improve the life of citizens who live in proximity to the highway.

The Secretary, in consultation with the EPA, will submit a Report to Congress by December 19, 2008. The report will include a description of the activities conducted under the program, and any recommendations for further legislative or administrative action that the Secretary of Transportation considers appropriate.

**Program Description**

In this rulemaking, the Department of Transportation is establishing interim procedures for the implementation of a new short sea transportation program, America's Marine Highway Program. Within this program, this rulemaking sets forth procedures for recommendations for designation of Marine Highway Corridors, and separate procedures for applications for Marine Highway Projects.

**Rulemaking Analyses and Notices**

**Executive Order 12866 and DOT Regulatory Policies and Procedures**

This rulemaking is not significant under section 3(f) of Executive Order 12866, and as a consequence, the Office of Management and Budget (OMB) did not review the rule. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). It is also not considered a major rule for purposes of Congressional review under Public Law 104-121. Designation of Marine Highway Corridors and Marine Highway Projects does not have an immediate economic impact. Following designation, individual Corridor and Project components that may have an economic impact will be determined as they are identified.

**Executive Order 13132**

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations herein have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among local officials. Therefore, we did not consult with State and local officials because it was not necessary.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act requires us to assess the impact that regulations will have on small entities. After analysis of this proposed rule, the Maritime Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, although we do anticipate that a small number of small entities will participate in the program and any financial impact is expected to be minimal.

**Environmental Assessment**

We have analyzed this proposed rule for purposes of compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and we have concluded that designation of Marine Highway Corridors and Marine Highway Projects does not have an immediate environmental impact. Following designation, individual Corridor and Project components that may have an environmental impact will be determined as they are identified.

This program envisions the use of coastwise vessels to relieve congestion on highways, and any overall environmental impact should be positive. The Texas Transportation Institute, "A Modal Comparison of Domestic Freight Transportation Effects on the General Public" (December 2007).

#### Paperwork Reduction Act

This interim regulation establishes a new requirement for the collection of information. The Office of Management and Budget (OMB) will be requested to review and approve the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Sec. 3501, *et seq.*).

In accordance with the Paperwork Reduction Act, this document announces the Maritime Administration's intentions to request approval for the public to review this interim regulation.

—Copies of this request may be obtained from the Office of Marine Highways and Passenger Services, MAR-520, Suite W21-315, 1200 New Jersey Avenue, SE., Washington, DC 20590.

—*Title of Collection:* America's Marine Highway Program, 46 CFR Part 393.

—*Type of Request:* New request for information collection.

—*OMB Control Number:* 2133-NEW.

—*Form Number:* None.

—*Expiration Date of Approval:* Three years following approval by the Office of Management and Budget.

—*Summary of Collection of Information:* Persons seeking to make recommendations for designation of Marine Highway Corridors may provide those recommendations in the form of comments to this interim final rulemaking. Persons seeking nomination of a Project under America's Marine Highway Program will be required to file a written application. No form or particular format will be required for the application. However, information about the applicant and the proposal will be necessary for proper analysis of the nominated project.

—*Need for and Use of the Information:* The information collected will be used to revise and publish a final regulation implementing America's Marine Highway Program. Without the information the Maritime Administration would not benefit from public review of the program.

—*Description of Respondents:* Individuals, partnerships or coalitions seeking designation.

—*Annual Responses:* Once the Program is implemented, Applications for

designation as Projects will be solicited 1–2 times per year, depending on level of interest in the program. The agency anticipates receiving approximately 20 responses per year. Recommendations for future designations of Marine Highway Corridors may be provided at any time, although it is not anticipated that additional Marine Highway Corridors will be designated for several years following implementation of the Program.  
—*Annual Burden:* 30 hours.

#### Unfunded Mandates Reform Act

This rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves this objective of U.S. policy. Department of Transportation guidance requires the use of a revised threshold figure of \$136.1 million, which is the value of \$100 million in 2008 after adjusting for inflation.

#### Consultation and Coordination With Indian Tribal Governments

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments, dated November 6, 2000, seeks to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian Tribal Governments, and to reduce the imposition of unfunded mandates upon Indian tribes. Designation of Marine Highway Corridors and Marine Highway Projects does not have an immediate impact on Indian tribes. Following designation, individual Corridor and Project components that may have an impact on Indian tribes will be determined as they are identified.

#### Regulation Identifier Number (RIN)

A regulation identifier 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### Privacy Act

Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). 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://www.regulations.gov>.

#### List of Subjects in 46 CFR Part 393

Marine Highway, Short sea transportation, Vessels.

■ Accordingly, the Maritime Administration amends 46 CFR chapter II by adding part 393 to read as follows:

#### PART 393—AMERICA'S MARINE HIGHWAY PROGRAM

Sec.

393.1 Purpose.

393.2 Definitions.

393.3 Marine Highway Corridors.

393.4 Marine Highway Projects.

393.5 Incentives, Impediments and Solutions.

393.6 Research on Marine Highway Transportation.

Appendix to Part 393—Criteria for Initial Assessment of Marine Highway Project Applications.

**Authority:** Energy Independence and Security Act of 2007, Sections 1121, 1122, and 1123 of Public Law 110–140, approved December 19, 2007 (121 STAT. 1492).

#### § 393.1 Purpose.

(a) This part prescribes interim regulations establishing a short sea transportation program as set forth in the Energy Independence and Security Act of 2007 (Sections 1121, 1122, and 1123 of Pub. L. 110–140, approved December 19, 2007 (121 STAT. 1492)).

(b) The purpose of America's Marine Highway Program is described in Section 1121. Section 1121 states that "[t]he Secretary shall designate short sea transportation routes as extensions of the surface transportation system to focus public and private efforts to use the waterways to relieve landside congestion along coastal corridors." America's Marine Highway Program consists of four primary components:

(1) *Marine Highway Corridor Designations:* This regulation establishes the goals and methods by which specific Marine Highway Corridors will be identified and designated by the Secretary of Transportation. The purpose of designating Marine Highway Corridors is to integrate America's Marine Highway into the surface transportation system. The Marine Highway Corridors will serve as extensions of the surface transportation system and consist of the

navigable coastal, inland, and intracoastal waters of the United States, to support the movement of passengers and cargo between U.S. ports, or between U.S. ports and unloaded either at a port in Canada located in the Great Lakes Saint Lawrence Seaway System; or loaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System and unloaded at a port in the United States, relieving landside congestion. America's Marine Highway Program will encourage the development of multi-jurisdictional coalitions and focus public and private efforts and investment on shifting freight and passengers from congested roads and rail lines to effectively utilize Marine Highway Corridors.

(2) *Marine Highway Project*

*Designations:* This regulation establishes the goals and methods by which specific Marine Highway Projects will be identified and designated by the Secretary of Transportation. The purpose is to mitigate landside congestion by designating projects that, if successfully started, expanded, or otherwise enhanced, would provide the greatest benefit to the public in terms of congestion relief, improved air quality, reduced energy consumption, infrastructure construction and maintenance savings, improved safety, and long-term economic viability. Designated Marine Highway Projects may receive direct support from the Department of Transportation as described in this section.

(3) *Incentives, Impediments and Solutions:* This section outlines how the Department of Transportation, in partnership with public and private entities, will identify potential incentives, seek solutions to impediments to encourage utilization of America's Marine Highway and incorporate it, including ferries, in State and regional transportation planning.

(4) *Research:* This section describes the research that the Department of Transportation, working with the Environmental Protection Agency, will conduct to support America's Marine Highway, within the limitations of available resources, and to encourage multi-state planning. Research would include environmental and transportation impacts (benefits and costs), technology, vessel design, and solutions to impediments to the Marine Highway.

(c) In addition, vessels engaged in Marine Highway operations are qualified for Capital Construction Fund (CCF) benefits. This program was created to assist owners and operators of U.S.-flag vessels in accumulating the capital necessary for the modernization

and expansion of the U.S. merchant marine by encouraging construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money placed into a CCF.

**§ 393.2 Definitions.**

For the purposes of this part:

*Administrator.* The Maritime Administrator, U.S. Maritime Administration, U.S. DOT, who will be authorized by the Secretary of Transportation to administer America's Marine Highway Program.

*Applicant.* An entity that applies for designation of a Marine Highway Corridor or Project under this regulation.

*Coastwise Shipping Laws.* Laws, including the Jones Act, as set forth in Chapter 551 of Title 46, United States Code.

*Corridor Sponsor.* An entity that recommends a Corridor for designation as a Marine Highway. Corridor sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including Departments of Transportation) and port authorities, who may submit recommendations for designation as a Marine Highway Corridor.

*Domestic Trade.* Trade between points in the United States.

*Lift-on/Lift-off (LO/LO) Vessel.* A vessel of which the loading and discharging operations are carried out by cranes and derricks.

*Marine Highway Corridor.* A short sea transportation route that serves as an extension of the surface transportation system to relieve landside congestion along the highway corridor. It is one or more navigable waterways that, if used to transport freight or passengers, would provide measurable benefits to a surface transportation route in terms of reduced congestion, energy savings, reduced emissions, improved safety, and/or reduced infrastructure costs.

*Marine Highway (or Short Sea Transportation).* The carriage by vessel of passengers and/or cargo that is loaded at a port in the United States and unloaded either at another port in the United States, or that is loaded at a port in the United States and unloaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System; or loaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System and unloaded at a port in the United States.

*Project Sponsor.* Project sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, state governments

(including State Departments of Transportation) and port authorities, who may submit applications for designation as a Marine Highway Project.

*Roll-on/Roll-off (RO/RO) Vessel.* Any vessel that has ramps allowing cargo to be loaded and discharged by means of wheeled vehicles so that cranes are not required.

*Secretary.* The Secretary of Transportation.

*United States Documented Vessel.* A vessel documented under 46 U.S.C. Chapter 121.

**§ 393.3 Marine Highway Corridors.**

(a) *Summary.* The purpose of this section is to designate specific routes as Marine Highway Corridors. Corridors will be established by the Maritime Administrator. The goal of this designation process is to accelerate the development of multi-State and multi-jurisdictional Marine Highway Corridors to relieve landside congestion along highway and railroad corridors. Designation will encourage public/private partnerships, and help focus investment on those Marine Highway Corridors that offer the maximum potential public benefit in congestion reduction, energy efficiency, emissions reduction and other categories. Navigable waterways that parallel Corridors already designated as "Corridors of the Future" under DOT's National Strategy to Reduce Congestion will be fast-tracked for designation as Marine Highway Corridors.

(b) *Objectives.* The primary objectives of the designation of Marine Highway Corridors are to:

(1) Establish Marine Highway Corridors as "extensions of the surface transportation system" as provided by Section 1121 of the Energy Independence and Security Act of 2007.

(2) Develop multi-jurisdictional coalitions that focus public and private efforts to use the waterways to relieve landside congestion along freight and passenger Corridors.

(3) Obtain public benefit by shifting freight and passengers in measurable terms from congested highway and railroad routes to Marine Highway Corridors. Benefits, while primarily aimed at reducing congestion, can also include air quality and emissions improvements, reduced energy consumption, improved freight reliability and enhanced safety.

(4) Identify potential savings that could be realized by providing an alternative to surface transportation infrastructure construction and maintenance.

(c) *Designation of Marine Corridors.* The Department of Transportation will solicit recommendations for designation of specific routes as Marine Highway Corridors. Recommendations will be accepted from Corridor sponsors. Corridor sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, state governments (including State Departments of Transportation) and port authorities. When responding to specific solicitations for Marine Highway Corridors by the Secretary of Transportation, the following information will be required:

(1) *Physical Description of Proposed Marine Highway Corridor:* The recommendation should describe the proposed Marine Highway Corridor, and its connection to existing or planned transportation infrastructure and intermodal facilities. Include key navigational factors such as available draft, channel width, bridge or lock clearance and identify if they could limit service.

(2) *Surface Transportation Corridor Served:* Provide a summary of the surface transportation Corridor that the Marine Highway would benefit. Include a description of the Corridor, its primary users, the nature, locations and occurrence of congestion, urban areas affected, and other geographic or jurisdictional issues that impact its overall operation and performance.

(3) *Involved Parties:* Provide the organizational structure of parties recommending the Corridor designation including business affiliations, and private sector stakeholders. Multi-jurisdictional coalitions may include State Departments of Transportation, Metropolitan Planning Organizations, municipalities and other governmental entities that have been engaged and the extent to which they support the corridor designation.

(4) *Passengers and Freight:* Identify number of likely passengers and/or quantity of freight that are candidates for shifting to the proposed Marine Highway Corridor. If known, include specific shippers, manufacturers, distributors or other entities that could benefit from a Marine Highway alternative, and the extent to which these entities have been engaged.

(5) *Congestion Reduction:* Describe extent to which the proposed Corridor could relieve landside congestion in measurable terms. Include any known offsetting infrastructure savings (either construction or maintenance) that would result from the project.

(6) *Public environmental, energy or safety benefits:* The recommendation should provide, if known, the savings

over status quo in fuel, emissions, or safety improvements that could be derived from shifting some capacity to the proposed Marine Highway Corridor. It should also consider the implications future growth may have on the proposal and include any affiliations with environmental advocacy groups or community groups that support the Corridor designation.

(7) *Impediments:* Describe known or anticipated obstacles to shifting capacity to the proposed Marine Highway Corridor. Include any strategies, either in place or proposed, to deal with the impediments.

(d) *Action by the Department of Transportation.* All Marine Highway Corridor designation recommendations will be evaluated based upon the preceding criteria. An announcement of waterways designated as Marine Highway Corridors will appear in the **Federal Register**. In certain cases the Secretary of Transportation may designate a Marine Highway Corridor without receipt of a recommendation. The Department of Transportation will coordinate with Corridor sponsors to identify the most appropriate actions to support the Corridors. Support could include any of the following, as appropriate and within agency resources:

(1) Promote the Corridor with appropriate governmental, State and local transportation planners, private sector entities or other decision-makers.

(2) Coordinate with ports, State Departments of Transportation, Metropolitan Planning Organizations, localities, other public agencies and the private sector to support the designated corridor. Efforts can be aimed at obtaining access to land or terminals, developing landside facilities and infrastructure, and working with regional, State or local governmental entities to remove barriers to self-supporting operations.

(3) Pursue memorandums of agreement with other federal entities to transport federally owned or generated cargo using waterborne transportation along the Marine Highway Corridor, when practical or available.

(4) Assist with collection and dissemination of data for the designation and delineation of Marine Highway Corridors as available resources permit.

(5) Work with Federal entities and state and local governments to include designated Corridors in transportation planning.

(6) Bring specific impediments to the attention of the Marine Highway Advisory Board.

(7) Conduct research on issues specific to designated Corridors as available resources permit.

(8) Communicate with designated Corridor coalitions to provide ongoing support and identify lessons learned and best practices for the overall Marine Highway program.

(9) Collect data and disseminate data for the designation and delineation of short sea transportation routes.

#### § 393.4 Marine Highway Projects.

(a) *Summary.* The purpose of this section is to designate specific Marine Highway Projects to mitigate landside congestion. The goal is to identify Projects that, if successfully started, expanded, or otherwise enhanced, would provide the greatest benefit to the public. Public benefits to be considered include road and railroad congestion relief (particularly in urban areas and along corridors with national significance), reduced emissions or energy consumption, infrastructure construction and maintenance savings, improved safety, and long-term economic viability. Designation can help focus public and private investment on pre-identified projects that offer the maximum potential public benefit. Designated Marine Highway Projects may receive support from the Department of Transportation as described in this section.

(b) *Objectives.* The primary objectives of the designation of Marine Highway Projects are:

(1) Reduce landside congestion.

(2) Identify proposed services that represent the greatest public benefit as measured in congestion relief, energy savings, reduced emissions and improved safety.

(3) Focus resources on those projects that offer the greatest likelihood of success.

(4) Identify potential savings by providing an alternative to surface transportation infrastructure construction and maintenance.

(5) Develop best practices for the Marine Highway Program.

(6) Provide specific examples with performance measures and quantifiable outcomes for the Marine Highway.

(c) *Designation of Marine Highway Projects.* The Department of Transportation will solicit applications for designation as specific Marine Highway Projects. Applications will be accepted from a Project sponsor. Project sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, state governments (including State Departments of Transportation) and port authorities. Project sponsors are

encouraged to develop coalitions and public/private partnerships with the common objective of developing the specific Marine Highway Project. Potential partners can include vessel owners and operators, third party logistics providers, trucking companies, shippers, port authorities, state, regional and local transportation planners, or any combination of entities working in collaboration under a single application. Candidate Projects can be new starts or existing Marine Highway operations where expansion or improvements present maximum public benefit. Applications must meet the requirements of coastwise shipping laws and all applicable federal, state and local laws.

(d) *Action by the Department of Transportation.* (1) The Department will evaluate and select Projects based on a cost-benefit analysis and technical review of the information provided by the applicant. The Department will publish, and update periodically, the application information required and the factors that will be considered in the evaluation. Each factor will be weighed according to its relative cost or benefit. Applicants may request that other factors be considered in the cost-benefit analyses.

(2) Projects that support a designated Marine Highway Corridor, receive a favorable technical review, and meet other minimum standards as defined by the Department, may be nominated by the Maritime Administrator for selection by the Secretary.

(3) Upon designation as a Marine Highway Project, the Department of Transportation will coordinate with the Project sponsor to identify the most appropriate Departmental actions to support the project. Support could include any of the following, as appropriate and within agency resources:

(i) Promote the service with appropriate governmental, regional State or local transportation planners, private sector entities or other decision makers.

(ii) Coordinate with ports, State Departments of Transportation, Metropolitan Planning Organizations, localities, other public agencies and the private sector to support the designated service. Efforts can be aimed at identifying resources, obtaining access to land or terminals, developing landside facilities and infrastructure, and working with regional, State or local governmental entities to remove barriers to success.

(iii) Pursue memorandums of agreement with other federal entities to transport federally owned or generated

cargo using the services of the designated project, when practical or available.

(iv) In cases where transportation infrastructure is needed, Project sponsors may request to be designated on the Secretary of Transportation's list of high-priority transportation infrastructure projects under Executive Order 13274, "Environmental Stewardship and Transportation Infrastructure Project Review." For these projects, Executive Order 13274 provides that Federal agencies shall, to the maximum extent practicable, expedite their reviews for relevant permits or other approvals and take related actions as necessary, consistent with available resources and applicable laws.

(v) Assist with developing individual performance measures as described in this rule.

(vi) Work with Federal entities and State and local governments to include designated Projects in transportation planning.

(vii) Bring specific impediments to the attention of Marine Highway Advisory Board.

(viii) Conduct research on issues specific to designated Projects.

(ix) Maintain liaison with representatives of designated Projects to provide ongoing support and identify lessons learned and best practices for other projects and the overall Marine Highway program.

(e) *Application for Designation as a Marine Highway Project.* Marine Highway Project designation will be based on evaluation of the criteria outlined in this rule. When responding to specific solicitations for Marine Highway projects by the Department of Transportation, the following information will be required:

(1) *Proposed project:* The application should describe the overall operation; which ports and terminals will be served, number and type of vessels, size, quantity and type of cargo and/or passengers, routes, frequency, and other relevant information. Additional project components applicants should address include the following:

(i) Identify which, if known, designated Marine Highway Corridors will be utilized.

(ii) Provide the organizational structure of the proposed project, including business affiliations, environmental non-profit organizations and governmental or private sector stakeholders.

(iii) Documents affirming commitment or support from entities involved in the project.

(iv) State Departments of Transportation, Metropolitan Planning Organizations, municipalities and other governmental entities that have been engaged and extent to which they support the service.

(2) *Shippers:* Identify shippers that have indicated an interest in and level of commitment to the proposed service, or describe the specific commodities, market, and shippers the service will attract, and the extent to which these entities have been engaged. Applications should include the marketing strategy.

(3) *Potential relief to surface transportation congestion:* Describe extent to which the proposed project will relieve landside congestion in measurable terms, such as reductions in vehicle miles traveled. Include the landside corridors that stand to benefit from the operation, and any known infrastructure savings (either construction or maintenance) that would result from the project.

(4) *Environmental, energy or safety benefits:* The application should address the savings over the current practice in fuel, emissions, or safety improvements that would result from the proposed operation. Include any affiliations with environmental groups or additional benefits the service would offer.

(5) *Finance Plan and Private Sector Participation:* Provide projected revenues and expenses. Include labor and operating costs, fixed and recurring infrastructure costs. Include commitments from terminals, shippers, operators and other entities. A cost benefit analysis should be provided, if available. Note that prior to final designation as a project, a cost benefit analysis will be required, if not provided in the original application.

(6) *Impediments:* Describe any known or anticipated obstacles to either start-up or long-term success of the project. Include any strategies, either in place or proposed, to mitigate impediments.

(7) *Proposed Project Timeline:* The Application should include a proposed project time-line with estimated start dates and key milestones. Include the point in the timeline at which the enterprise is anticipated to attain self-sufficiency (if applicable).

(8) *Cost and Benefits:* Applicants will describe, to the extent known, the benefits to be derived from the designation of the project in monetary terms, including the items described in number 1 through 7 above, such as the environmental improvements, reduction in fuel usage, reduction in landside congestion, increase in employment, increase in taxes paid or other revenues derived therefrom, safety improvements

including potential saving of human life and property from fewer traffic accidents, decrease in time required for delivery of cargo or passengers and the costs associated with construction of new infrastructure if any, the costs of additional operations or maintenance of the project, including any public funds needed for support of the project. Upon receipt by the Maritime Administrator, the application will be evaluated using weight-based criteria during a technical review. The review will assess factors such as project scope, impact, public benefit, offsetting costs, cost to the Government (if any), the likelihood of long-term self-supporting operations, and its relationship with Marine Highway Corridors, once designated (See 46 CFR 393.3 Marine Highway Corridors). Additional factors may be considered during the evaluation process. *All factors will be quantified and weighted by their relative costs and benefits.* Project sponsors will be notified in writing by the Maritime Administration if they receive designation.

(9) *Evaluation Criteria:* To view the criteria which will be used in the initial assessment of Project applications, please see the Appendix to part 393.

(10) *Performance Measures:* Once designated projects enter the operational phase (either start of a new service, or expansion of existing service), they will be evaluated regularly to determine if the project's objectives are being achieved. Overall project performance will be in one of three categories—exceeds, meets, or does not meet original projected unit cost. Unit cost at time of project designation will be compared to the unit cost during the performance evaluation. Unit cost will be calculated by dividing Public benefit by Public cost, then multiplying it by the Timeliness factor, each of which are described below:

(i) *Public benefit:* Does the project meet the stated goals in shifting specific numbers of vehicles (number of trucks, rail cars or automobiles) off the designated landside routes (measured in miles, weighted for either urban or rural)? Other public benefits, including congestion reduction, energy savings, reduced emissions, and safety improvements will be assumed to be a direct derivative of either numbers of vehicles shifted, or vehicle/ton miles avoided, unless specific factors change (such as a change in vessel fuel or emissions).

(ii) *Public cost:* Is the overall cost to the Federal government (if any) on track with estimates at the time of designation? The overall cost to the Federal government represents the

amount of Federal investment (either direct funding, loan guarantees or similar mechanisms) reduced by the offsetting savings the project represents (road/bridge wear and tear avoided, infrastructure construction or expansion deferred).

(iii) *Timeliness factor:* Is the project on track for the point at which the enterprise is projected to attain self-sufficiency? For example, if the project was anticipated to attain self-sufficiency after 36 months of operation, is it on track at the point of evaluation to meet that objective? This can be determined by assessing revenues, freight trends, expenses and other factors established in the application review process.

#### **§ 393.5. Incentives, Impediments and Solutions.**

(a) *Summary.* The purpose of this section is to identify short term incentives and solutions to impediments in order to encourage use of the Marine Highway for freight and passengers.

(b) *Objectives.* This section is aimed at increasing the use of the Marine Highways through the following primary objectives:

(1) Encourage the integration of Marine Highways in transportation plans at the State, regional and local levels.

(2) Develop short term incentives aimed at expanding existing or starting new Marine Highway operations.

(3) Identify and seek solutions to impediments to the Marine Highway.

(c) *Federal, State, Local, and Regional Transportation Planning.* The Department of Transportation will coordinate with Federal, state and local governments and metropolitan planning organizations to develop strategies to encourage the use of America's Marine Highway for transportation of passengers and cargo. Activities will include the following:

(1) Work with State Departments of Transportation to assess plans and develop strategies, where appropriate, to incorporate Marine Highway transportation, including ferries, and other marine transportation solutions for regional and interstate transport of freight and passengers in their statewide and metropolitan transportation plans.

(2) Facilitating groups of States and multi-State transportation entities to determine how Marine Highway transportation can address congestion, bottlenecks, and other interstate transportation challenges to their mutual benefit.

(3) Identify other federal agencies that have jurisdiction over the Project or which currently provide funding for

components of the project in order to determine the extent to which those agencies should be consulted with and invited to assist in the coordination process.

(3) Consult with Federal Highway Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, Federal Transit Administration and other entities within DOT, as appropriate to evaluate costs and benefits of proposed Marine Highway Corridors and Projects.

(d) *Short-Term Incentives.* The Department of Transportation will develop proposed short-term incentives that would encourage the use, initiation, or expansion of Marine Highway services. This will be done in consultation with shippers and other participants in transportation logistics, and government entities, as appropriate.

(e) *Impediments and Solutions.* The Department of Transportation will establish a Board in accordance with the Federal Advisory Committee Act (FACA) whose role is to identify impediments that hinder effective use of the Marine Highway and recommend solutions. The Board will meet regularly and report its findings and recommended solutions to the Maritime Administrator. Board membership will evolve as impediments are identified and the area of focus changes. Representation could include Federal Departments and Agencies, State Departments of Transportation, Metropolitan Planning Organizations and other local public entities and private sector stakeholders. The Department of Transportation will take actions, as appropriate, to address impediments to the Marine Highway.

#### **§ 393.6. Research on Marine Highway Transportation.**

(a) *Summary.* The Department of Transportation will work in consultation with the Environmental Protection Agency and other entities as appropriate, within the limits of available resources, to conduct research in support of America's Marine Highway. Research can be general in nature, or in direct support of designated Marine Highway Corridors and Projects.

(b) *Objectives.* The primary objectives of selected research Projects are to:

(1) Identify and quantify environmental and transportation-related benefits that can be derived from utilization of the Marine Highway as compared to other modes of surface transportation.

(2) Identify existing or emerging technology, vessel design, and other improvements that would reduce

emissions, increase fuel economy, and lower costs of Marine Highway

transportation and increase the efficiency of intermodal transfers.

## Appendix to Part 393—Criteria for Initial Assessment of Marine Highway Project Applications

### Criteria for Initial Assessment of Marine Highway Project Applications

1. Evaluate each application as strong, medium, or weak in reference to the criteria listed below.
2. Collapse the criteria-specific ratings into a single "initial assessment rating" — strong, medium or weak.

Criteria	Central Question	Areas to Consider
<b>Overall Benefit of Project:</b>		
<i>Scope</i>	How much freight or passenger traffic would be affected?	<ul style="list-style-type: none"> <li>- How many truck/rail car miles are likely to be saved?</li> <li>- How many passenger vehicle miles will be saved?</li> </ul>
<i>Impact</i>	Are the reductions in critical areas?	<ul style="list-style-type: none"> <li>- Miles saved in urban areas?</li> <li>- Miles saved in rural areas?</li> <li>- Does the project represent a segment of a Marine Highway Corridor or include an area designated in DOT's Urban Partnership Program?</li> <li>- Does it support another DOT project or initiative?</li> </ul>
<i>Public benefit</i>	What are the benefits to the public in the following? <ul style="list-style-type: none"> <li>- Congestion Reduction</li> <li>- Energy Savings</li> <li>- Reduced Emissions</li> <li>- Safety Improvements</li> </ul>	<ul style="list-style-type: none"> <li>- Number of urban and rural miles saved</li> <li>- Energy consumption between vessel &amp; truck or rail</li> <li>- Using available data, emission reductions (SOX/NOX/Particulates)</li> <li>- What is the statistical savings in highway/rail accidents</li> </ul>
<b>Return on Investment/Feasibility</b>		
<i>Offsetting Costs</i>	What publicly funded expenses does this project alleviate? <ul style="list-style-type: none"> <li>- Road Repair due to wear and tear</li> <li>- Construction/Expansion of existing Roads/Rail lines</li> </ul>	<ul style="list-style-type: none"> <li>- Utilize a formula of trucks/cars per dollar of maintenance</li> <li>- Does the proposed project delay or eliminate need for new construction?</li> </ul>
<i>Feasibility</i>	Is the project likely to achieve self-sustaining operation?	<ul style="list-style-type: none"> <li>- Identify current/future impediments to successful operation</li> <li>- Is the business model feasible?               <ul style="list-style-type: none"> <li>- Is there adequate freight/passenger load?</li> <li>- Is the cost difference between modes minimal?</li> <li>- What variables will influence success?</li> <li>- Is it likely to begin/expand on time?</li> </ul> </li> </ul>
<i>Cost Effectiveness (Government)</i>	What is the cost to the Government to support the project?	<ul style="list-style-type: none"> <li>- If there is a Federal cost, what is the return against:               <ul style="list-style-type: none"> <li>- Offsetting costs?</li> <li>- Public benefit received?</li> </ul> </li> </ul>

By Order of the Secretary.

Dated: October 2, 2008.

**Leonard Sutter,**

*Maritime Secretary.*

[FR Doc. E8-23834 Filed 10-8-08; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 12

[EB Docket No. 06-119; WC Docket No. 06-63; FCC 07-107]

### Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** On August 12, 2008, the Office of Management and Budget (OMB) approved the information collection contained in § 12.3 of the Federal Communications Commission's rules, regarding 911 and E911 analyses and reports, as adopted by the Federal Communications Commission (Commission) in its Order addressing the report and recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks. 72 FR

37655, July 11, 2007. The effective date for § 12.3 of the Commission's rules was deferred until OMB approved this information collection. In this document, the Commission provides notice that § 12.3 of the Commission's rules is effective on October 9, 2008.

**DATES:** Section 12.3 of the Commission's rules, 47 CFR 12.3, (72 FR 37655, July 11, 2007) is effective on October 9, 2008. Respondents are required to submit their reports by February 6, 2009.

**ADDRESSES:** Entities required to file reports through the E911 Architecture Information System should obtain login identifications, passwords and the URL for the system from John Healy in the Commission's Public Safety and Homeland Security Bureau at 202-418-2448 or [John.Healy@fcc.gov](mailto:John.Healy@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about this information collection contact Jeffery Goldthorp, Chief, Communications Systems Analysis Division, Public Safety and Homeland Security Bureau, Federal Communications Commission at 202-418-1096.

**SUPPLEMENTARY INFORMATION:** In response to the report and recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, the Commission took a number of steps to improve the reliability and resiliency of communications networks. Among the

actions taken by the Commission was the adoption of § 12.3 of the Commission's rules, which requires local exchange carriers (LECs), commercial mobile radio service (CMRS) providers required to comply with § 20.18 of the Commission's rules, and interconnected Voice over Internet Protocol (VoIP) service providers to analyze their 911 and E911 networks and/or systems and provide reports addressing the redundancy, resiliency and reliability of those networks and/or systems. The Commission exempts the following entities from this rule: (1) LECs that meet the definition of a Class B company set forth in § 32.11(b)(2) of the Commission's rules; (2) non-nationwide CMRS providers with no more than 500,000 subscribers at the end of 2001; and (3) interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to § 32.11 of the Commission's rules. The effective date for § 12.3 of the Commission's rules was deferred until OMB approved the information collection. 72 FR 37655, July 11, 2007. On August 12, 2008, the Office of Management and Budget approved this information collection. 73 FR 50012, August 25, 2008. (OMB Control Number: 3060-1119.) The details of this information collection were set forth in a previous notice. 73 FR 39305, July 9, 2008. Section 12.3 of