kidney/anatomical site occur no sooner than 1 month after the initial treatment; and (3) each kidney/anatomical site be limited to a total of three treatment sessions.

Small ureteral stones: Small middle and lower ureteral stones, 4 to 6 mm in largest dimension, are likely to pass spontaneously. Therefore, the risks and benefits of extracorporeal shock wave lithotripsy should be carefully assessed in this patient population.

Staghorn stones: The effectiveness of extracorporeal shock wave lithotripsy may be limited in patients with either staghorn or large (≤ 20 mm in largest dimension) stones. Alternative procedures are recommended for these patients.

d. Patient Selection and Treatment:

Children: The safety and effectiveness of this device in the treatment of urolithiasis in children have not been demonstrated. Although children have been treated with shock wave therapy for upper urinary tract stones, experience with lithotripsy in such cases is limited. Studies indicate that there are growth plate disturbances in the epiphyses of developing long bones in rats subjected to shock waves. The significance of this finding to human experience is unknown.

Women of childbearing potential: The treatment of lower ureteral stones should be avoided in women of childbearing potential. The application of shock wave lithotripsy to this patient population could possibly result in irreversible damage to the female reproductive system and to the unborn fetus in the undiagnosed pregnancy.

e. Adverse Events:

Potential adverse events associated with the use of extracorporeal shock wave lithotripsy include those listed below, categorized by frequency and individually described:

1. *Potential Adverse Events of Extracorporeal Shock Wave Lithotripsy Categorized by Frequency*:

a. Commonly reported (> 20 percentage of patients): Hematuria, pain/renal colic, skin redness at shock wave entry site.

b. Occasionally reported (1 to 20 percentage of patients): Cardiac arrhythmia, urinary tract infection, urinary obstruction/steinstrasse, skin bruising at shock wave entry site, fever (> 38EC), nausea/vomiting.

c. Infrequently reported (< 1 percentage of patients): Hematoma (perirenal/intrarenal), renal injury.

2. *Description of Adverse Events of Extracorporeal Shock Wave Lithotripsy*:

Cardiac arrhythmia: Cardiac arrhythmias, most commonly premature ventricular contractions, are generally reported during extracorporeal shock wave lithotripsy at fixed shock wave delivery in 2 to 20 percentage of patients. These cardiac disturbances rarely pose a serious risk to the healthy patient, and typically resolve spontaneously upon synchronizing the shock waves with the refractory period of the ventricular cycle (i.e., ECG gating) or terminating treatment.

Fever (> 38 C): Fever is occasionally reported after lithotripsy, and may be secondary to infection.

Hematoma (perirenal/intrarenal): Clinically significant intrarenal or perirenal hematomas occur in < 1 percentage of lithotripsy treatments. Typically patients who experience this complication present with severe flank pain. Although clinically significant hematomas often resolve with conservative management, severe hemorrhage and death have been reported. Management of severe renal hemorrhage includes the administration of blood transfusions, percutaneous drainage, or surgical intervention.

Hematuria: Hematuria occurs following most treatments, is believed to be secondary to trauma to the renal parenchyma, and usually resolves spontaneously within 24 to 48 hours of treatment.

Nausea/vomiting: Transient nausea and vomiting are occasionally reported immediately after lithotripsy, and may be associated with either pain or the administration of sedatives or analgesia.

Pain/renal colic: Pain/renal colic commonly occurs during and immediately after treatment, and typically resolves spontaneously. Temporary pain/renal colic may also occur secondary to the passage of stone fragments, and can be managed with medication.

Renal injury: Extracorporeal shock wave lithotripsy procedures have been known to cause damage to the treated kidney. The potential for injury, its long-term significance, and its duration are unknown.

Skin bruising at shock wave entry site: Skin bruising at the shock wave entry site occasionally occurs after treatment, and it typically resolves spontaneously.

Skin redness at shock wave entry site: Skin redness at the shock wave entry site commonly occurs during and immediately after treatment, and typically resolves spontaneously.

Urinary obstruction/steinstrasse: Urinary obstruction occurs in up to 6 percent of patients following lithotripsy due to stone fragments becoming lodged in the ureter, and may be the result of either a single stone fragment or the accumulation of multiple small stone particles (i.e., steinstrasse). Patients with urinary obstruction typically present with persistent pain, and may be at risk of developing hydronephrosis with subsequent renal failure if the obstruction is not promptly treated. Intervention is necessary if the obstructing fragments do not pass spontaneously.

Urinary tract infection: Urinary tract infection (UTI) occurs in 1 to 7 percent of patients following extracorporeal shock wave lithotripsy as a result of the release of bacteria from the fragmentation of infected calculi, and infrequently results in pyelonephritis or sepsis. The risk of infectious complications secondary to extracorporeal shock wave lithotripsy can be minimized through the use of prophylactic antibiotics in patients with UTI and infection stones.

Dated: January 21, 1999.

Linda S. Kahn,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–2689 Filed 2–5–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 180

Federal Railroad Administration

49 CFR Part 261

Federal Transit Administration

49 CFR Part 640

[FHWA Docket No. FHWA–98–47–15]

RIN 2125–AE49

Credit Assistance for Surface Transportation Projects

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

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

SUMMARY: This document proposes to implement a new program enacted under the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), to provide credit assistance to surface transportation projects. The TIFIA authorizes the DOT to provide secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Projects will be evaluated and selected by the Secretary of Transportation. Following selections,

individual credit agreements will be developed through negotiations between the project sponsors and the DOT. This document solicits comments on a proposed regulation to establish a new credit assistance program for surface transportation projects; and the process by which the DOT, through the FHWA, the FRA, and the FTA, will administer such credit assistance.

DATES: Comments must be submitted on or before March 10, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: *FHWA:* Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673. *FRA:* Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390. *FTA:* Mr. Paul Marx, Office of Policy Development, (202) 366–1734. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, 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 on-line for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at **http://www.access.gpo.gov/nara**.

Additional information on the TIFIA program and credit assistance for surface transportation projects generally is available at the TIFIA web site at http://tifia.fhwa.dot.gov. Among other information, the DOT will provide responses to commonly asked questions and information on program participation.

Background

The Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, created two new Federal credit programs: The Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) and the Railroad Rehabilitation and Improvement Financing Program (RRIF). RRIF will be addressed in a separate notice of proposed rulemaking. TIFIA, as amended by section 9007, Pub. L. 105–206, 112 Stat. 685, 849, and codified at 23 U.S.C. 181–189, establishes a new Federal credit program for surface transportation projects. Funding for this program is limited, meaning that projects obtaining assistance under TIFIA will be selected on a competitive basis. Final selections of projects will be made by the Secretary of Transportation.

Credit assistance programs such as TIFIA are designed to help financial markets develop the capability to supplement the role of the Federal Government in helping finance the costs of large projects of national significance. Developing, implementing, and evaluating financial assistance programs such as TIFIA is a crucial mission of the DOT. To help ensure financial and programmatic success, the DOT is establishing a multi-agency Credit Program Steering Committee and Working Group. The Steering Committee and Working Group are comprised of representatives from the Office of the Secretary, the Office of Intermodalism, the FHWA, the FRA, and the FTA, as well as other DOT agencies and offices. The Steering Committee and Working Group will coordinate and monitor all policy decisions and implementation actions associated with this Federal credit assistance program.

Outreach efforts have already been made to facilitate the implementation of TIFIA. At a July 13, 1998, meeting sponsored by the American Association of State Highway and Transportation Officials, DOT representatives met with over 100 State transportation officials to discuss implementation of provisions of TEA–21, including the Act's Federal credit assistance programs. On September 14, 1998, a public focus group meeting of about 70 Federal and State officials, project sponsors, and members of the financial community was held in New York City to discuss the provision of credit assistance under TEA–21 programs. Another public focus group meeting of about 60 governmental and private sector officials was held on December 8, 1998, near San Diego, California. On-going DOT activities include meeting with capital markets financial experts and disseminating program information to the public for their comments.

Program Information

Funding

The TIFIA authorizes annual funding levels for both total annual credit amounts (i.e., the total principal amounts that may be disbursed in the form of direct loans, loan guarantees, or lines of credit) and subsidy amounts (i.e., the amounts of budget authority available to cover the estimated present value of default losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority funded from the Highway Trust Fund, other than the Mass Transit Account. As a practical example, for fiscal year 1999, TIFIA provides $80 million in budget authority to fund the subsidy costs associated with a total nominal amount of direct loans, loan guarantees, and lines of credit that is limited to $1.6 billion. Depending on the individual risk assessments made for each of the projects receiving assistance, the total amount of credit assistance provided in fiscal year 1999 may be less than the $1.6 billion limitation.

Total Federal credit assistance authorized under TIFIA is limited to $1.6 billion in fiscal year 1999; $1.8 billion in fiscal year 2000; $2.2 billion in fiscal year 2001; $2.4 billion in fiscal year 2002; and $2.6 billion in fiscal year 2003. These amounts lapse if not awarded by the end of the fiscal year for which they are provided.

To support this assistance by funding the required subsidy amounts, TIFIA provides budget authority of $80 million in fiscal year 1999; $90 million in fiscal year 2000; $110 million in fiscal year 2001; $120 million in fiscal year 2002; and $130 million in fiscal year 2003. This budget authority is subject to annual obligation limitations that may be established in appropriations law. Of the amounts made available, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Unobligated budget authority remains available for obligation in subsequent years.

Credit Instruments

Three types of credit instruments are permitted under TIFIA: secured (direct) loans, loan guarantees, and lines of credit. General rules concerning the terms governing these credit instruments appear at 23 U.S.C. 183 and 184. More specific terms will be determined on a project-specific basis during negotiations between the DOT and successful applicants.

Eligibility

Sections 181 and 182 of title 23, U.S.C., describe the conditions that govern a project's eligibility for assistance under TIFIA. Projects shall have eligible costs of at least $100 million or an amount equal to 50 percent of Federal-aid highway funds apportioned to the State in which the project is located for the most recently completed fiscal year, whichever is lesser. Projects principally involving the installation of an intelligent transportation system (ITS) must cost at least $30 million. To be eligible for assistance, projects must be classified within the following categories:

1. Surface transportation projects as defined under title 23 or chapter 53 of title 49 of the United States Code;
2. International bridge or tunnel projects for which an international entity authorized under Federal or State law is responsible;
3. Intercity passenger bus or rail facilities and vehicles, including those owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; or
4. Publicly-owned intermodal surface freight transfer facilities, provided that the facilities:

(a) are located on or adjacent to National Highway System routes or connections to the National Highway System, and (b) are not seaports or airports.

Application Process

Public or private applicants for credit assistance will be required to submit applications to the DOT in order to be considered for approval. Each fiscal year for which credit assistance is available, the DOT will publish a **Federal Register** notice to solicit applications for credit assistance. This notice will also be posted on the TIFIA web site, at the address cited above. The notice will specify the relevant due dates for that year's application submissions and funding approvals, as well as the address to which applications should be sent. It will also advise potential applicants of the estimated amount of funding available to support TIFIA credit instruments in the current and future fiscal years. An application checklist is appended to this NPRM. Respondents are encouraged to comment on the content of this checklist, which will serve as the basis for a standard application form. Detailed application information will be contained in a handbook of program guidelines that is currently being developed by the DOT and will be posted on the TIFIA web site and made available to the public at the time a solicitation for applications is published.

Charges

The DOT will require a non-refundable initiation charge for each project applying for credit assistance under TIFIA. The DOT may also require an additional credit processing charge for projects selected to receive assistance. The proceeds of any such charges will equal a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For fiscal year 1999, the DOT proposes an application initiation charge of $5,000 for each project applying for credit assistance under TIFIA. The DOT does not propose any credit processing charges for fiscal year 1999. For fiscal years 2000 and beyond, the DOT may adjust the amount of the application initiation charge, and will determine the appropriate amount of the credit processing charge based on early program implementation experience in fiscal year 1999. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

The Secretary cannot accept or compel from borrowers the subsidy costs of TIFIA credit instruments. However, the Secretary does have the authority to establish fees at a level sufficient to cover all or a portion of the subsidy costs to the Federal Government of providing credit assistance under TIFIA. Therefore, such fees could potentially reduce the subsidy cost of a TIFIA credit instrument to zero. That is to say, if in a given year there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive TIFIA assistance, the DOT may increase the application initiation charge or the credit processing charge on the approved applicant to reduce the subsidy cost of that project. Note that any such fees or charges may not be included among total project costs for the purpose of calculating the maximum 33 percent credit amount of TIFIA assistance.

Limitations on Assistance

The amount of credit assistance that may be provided to a project under TIFIA is limited to not more than 33 percent of eligible project costs. Costs incurred prior to a project sponsor's submission of an application for credit assistance may be considered in calculating eligible project costs only upon approval by the DOT. In addition, applicants shall not include application charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter, as discussed below) in the total project cost. No costs financed internally or with interim funding may be reimbursed later than a year following substantial completion of the project.

Within the overall credit assistance limitation of 33 percent of eligible project costs, the DOT may consider making multi-year contingent commitments of budget authority and associated credit assistance for especially large projects with extended construction periods and financing needs. In this instance, any reservation of future-year funding shall be made through a letter of intent and shall be contingent on the project's demonstrating satisfactory progress to the DOT. Depending on the overall demand for credit assistance under TIFIA, the DOT may limit such contingent commitments to 50 percent of the budget authority becoming available in applicable future years. If such a multi-year commitment is made, each year's loan will be tied to distinct, clearly identified project segments or stages.

Rating Requirement

The TIFIA allows the DOT to partially fund a credit instrument up to the estimated subsidy amount based on a preliminary rating opinion letter. However, the DOT proposes to provide credit assistance only after a formal credit agreement has been executed and the project's senior obligations have obtained a formal investment-grade rating.

In administering this provision, the DOT will require each applicant to furnish a preliminary rating opinion letter as part of the application process. The applicant is responsible for identifying and approaching one or more rating agencies to obtain such letter. This letter is to indicate that the applicant project's senior obligations have the potential of attaining an

investment-grade rating. This letter will allow the DOT to evaluate the application and potentially select the project and execute a term sheet upon which funds are obligated. The disbursement of any funds will be contingent upon the execution of a formal credit agreement between the DOT and the project sponsor and the receipt of a formal investment-grade rating on the project's senior obligations. This rating must apply to all project obligations with claims senior to that of the Federal credit instrument on the security pledged to the Federal credit instrument.

As suggested by the preceding paragraphs, the DOT's Federal credit instrument may have a junior claim to other debt issued for the project in terms of its priority interest in the project's pledged security. However, the DOT's claim on assets should not be subordinated to the claims of other creditors in the event of a default leading to bankruptcy, insolvency, or liquidation of the obligor. The DOT's interest may include collateral other than pledged revenues.

Threshold Criteria

To be eligible to receive Federal credit assistance under TIFIA, a project shall meet the following five threshold criteria:

(1) The project shall be included in a State transportation plan and, at such time as an agreement to make a Federal credit instrument is entered into under this Act, in an approved State Transportation Improvement Program.

(2) A State, local servicer, or other entity undertaking the project shall submit a project application to the Secretary of Transportation;

(3) A project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the State in which the project is located (in the case of a project principally involving the installation of Intelligent Transportation Systems (ITS), eligible project costs shall be reasonably anticipated to equal or exceed $30 million);

(4) Project financing shall be repayable, in whole or in part, from tolls, user fees or other dedicated revenue sources; and

(5) In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be included in the State transportation plan and an approved State Transportation Improvement Program.

With this rulemaking, the DOT elaborates on criterion 4 (repayment of project financing from user fees or other dedicated revenue sources). In applying this threshold criterion, the DOT will not consider current or future Federal funds, regardless of source, to be a dedicated revenue source. This interpretation is consistent with congressional intent that the Federal Government position itself as a minority-share investor in the context of this credit program.

Selection Criteria

The Secretary shall consider the following eight criteria in evaluating and selecting among eligible projects to receive credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system;

(2) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment;

(3) The extent to which such assistance would foster innovative public-private partnerships and attract private debt or equity investment;

(4) The likelihood that such assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed;

(5) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhances the efficiency of the project;

(6) The amount of budget authority required to fund the Federal credit instrument made available;

(7) The extent to which the project helps maintain or protect the environment; and

(8) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project.

With this rulemaking, the DOT requests comments on whether criterion 3 (the extent to which assistance under TIFIA would foster innovative public-private partnerships and attract private debt or equity investment) and criterion 8 (the extent to which assistance under TIFIA would reduce the contribution of Federal grant assistance to the project) should be elaborated. The DOT also requests comments on whether preference should be given to projects based on the total Federal contribution (including both credit and grant assistance from any source) and/or type of transportation project.

Tax Status of Loan Guarantees

The TIFIA did not amend the provisions in section 149(b) of the Internal Revenue Code that prohibit the use of direct or indirect Federal guarantees of tax-exempt obligations. Accordingly, the interest income on any project loan that is directly or indirectly federally guaranteed under TIFIA, shall not be exempt from Federal income taxation.

Rulemaking Analysis and Notices

The 30-day comment period is necessary to help ensure that this new program can be implemented before the credit amount authorized for fiscal year 1999 ($1.6 billion) lapses. Given the need for the DOT to solicit and evaluate applications, make selections, negotiate agreements with project sponsors, and obligate funds before the end of fiscal year 1999, the usual 60-day comment period would be both impracticable and contrary to public interest and congressional intent.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The DOT will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The DOT may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the DOT will also continue to file, in the docket, relevant information becoming available after the comment closing date. Interested persons should continue to examine the docket for new material.

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

The DOT has determined that issuance of a rule is necessary to implement TIFIA, and has concluded that this action represents a ''significant regulatory action'' within the meaning of DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Executive Order 12866. This determination is based on a finding that the rule may have an annual effect on the economy of $100 million or more. The NPRM was reviewed by the Office of Management and Budget under E.O. 12866.

This section summarizes the estimated economic impact of the

proposed rule. This regulation would affect only those entities that voluntarily elected to apply for TIFIA assistance and were selected to receive a Federal credit instrument. It would not impose any direct involuntary costs on non-participants.

The DOT has undertaken a preliminary evaluation of the economic impact of this proposed regulatory action. However, because the number, nature, and size of projects to be assisted will not be known until specific applicants come forward, this analysis is by necessity an estimate. Congress recognized this by including a provision in TIFIA (23 U.S.C. 189) requiring the Secretary to submit a report summarizing the effectiveness of the program within four years of the date of enactment of the legislation (June 9, 2002).

DOT and industry research has indicated that there are substantial economic productivity gains to be derived from capital investment in surface transportation facilities. One study estimates that in the four-decade period from 1950 to 1989, U.S. firms realized annual production cost savings of 18 percent from general highway investment (yearly return of 18 cents per dollar invested in all roads) and 24 percent from investment in non-local roads.[1] In addition to these direct returns, transportation capital investment typically generates significant spillover benefits, which may be of a non-financial nature, such as reduced pollution, increased safety, improved international competitiveness, and enhanced accessibility. Market imperfections often prevent these intangible but nonetheless important public benefits from being monetized and captured.

Just as transportation investment produces benefits, failure to invest results in cost increases. Another recent study estimates that congestion costs the average U.S. citizen $370 annually, in terms of time lost and fuel wasted.[2] These costs are expected to increase as growing investment needs—both in terms of system renewal and capacity expansion—and limited availability of public funding contribute to declining performance.

Growth in both freight movement and passenger travel has grown dramatically in recent years, and is expected to continue growing. For example, since 1980, total ton-miles and intercity passenger miles have grown by 30 percent and 60 percent respectively, according to a recent study by the American Association of State Highway and Transportation Officials. Despite substantial increases in authorized Federal funding levels for surface transportation under the Transportation Equity Act for the 21st Century, current resources are not expected to be able to keep pace with maintenance and preservation needs, let alone the additional demands resulting from growth in population and goods movement. Funding shortfalls can be particularly acute for large infrastructure projects (costing $100 million or more) which, due to their scale, often cannot be readily accommodated in ongoing State and local capital renewal programs.

The economic drag created by under-investment in the nation's transportation network is substantial, as shippers and motorists incur increased vehicle maintenance and fuel costs, shipping delays, safety hazards, and time delays associated with congestion and poorly maintained roads.

The TIFIA was established to provide fractional credit assistance to major transportation infrastructure projects—such as border crossings, trade corridors, and intermodal transfer facilities—that have the potential of generating substantial economic benefits both regionally and nationally. In many cases, such projects are capable of being supported through direct user charges or dedicated revenue streams that can be used to access private capital and other non-Federal funding sources. The TIFIA is designed to fill market gaps through providing supplemental and/or subordinate capital to such projects. It should facilitate their ability to access the capital markets or other financing sources for the majority of their funding needs. Through TIFIA's leverage of limited Federal funds with private capital, these capital-intensive projects can be advanced without displacing smaller, more traditional grant-supported projects. Federal risk exposure should be mitigated by substantial co-investment from non-Federal parties and the use of objective, market-based credit evaluation criteria.

The TIFIA is authorized to receive $530 million of budget authority to support up to $10.6 billion in nominal amounts of credit (or such lesser amounts of credit as can be supported by the budget authority). Under the terms of the legislation, the Federal share is limited to not more than 33 percent of total eligible project costs. In many cases, the actual share of TIFIA assistance may be considerably less. For example, prior to TIFIA, three major surface transportation projects in southern California obtained Federal credit instruments pursuant to special appropriations from Congress. Between 1993 and 1996, the Congress approved a $120 million standby Federal line of credit for the San Joaquin Hills Toll Road; two standby lines of credit totaling $145 million for the Foothill-Eastern Toll Road; and a $400 million direct Federal loan for the Alameda Corridor project. Each of these projects would have met the threshold eligibility criteria under the terms of TIFIA. The Federal credit assistance as a percent of total project costs for these three investments is approximately 8.5 percent, 11.5 percent, and 17.5 percent, respectively.

Under the Federal Credit Reform Act of 1990 (FCRA), the amount of budget authority necessary to support a Federal credit instrument depends upon the subsidy cost (i.e., the estimated present value cost of estimated losses that will be incurred as a result of defaults, net of any fee income). Each project will be assigned a subsidy cost based upon an evaluation of its credit-worthiness.

Since the actual projects under TIFIA have yet to be identified, it is not possible at this stage to ascertain the appropriate subsidy amounts. If, for example, the assumed average subsidy rate under TIFIA were 10 percent, the $530 million of budget authority could support $5.3 billion in nominal amount of Federal credit instruments, and (assuming a 33 percent TIFIA share of project costs) an aggregate of $15.9 billion in capital investment. This would represent a benefit:cost ratio (total capital investment compared to federal budgetary cost) of 30:1. If the subsidy rate averaged 5 percent, the budget authority could support $31.8 billion in aggregate investment; and if the subsidy rate averaged 15 percent, the budget authority could support approximately $10.6 billion in aggregate investment. The only costs imposed on the participants are the repayment of credit at the U.S. Treasury rate (which in certain instances may be significantly less than their own marginal cost of capital), a credit processing charge, and an application charge based upon direct costs incurred by the DOT in processing applications.

On this basis, the DOT has concluded that TIFIA will promote the efficient functioning of project delivery and the private markets, and will generate both direct and indirect benefits, including reduced congestion, greater mobility, improved safety, an enhanced environment, and greater economic growth. These benefits are anticipated to

[1] Contribution of Highway Capital to Industry and National Productivity Growth—Executive Summary, Ishaq Nadirir, New York, FHWA, 1996.

[2] Measuring and Monitoring Urban Mobility, Texas Transportation Institute, November 1996.

far surpass the combined direct costs to the Federal Government ($530 million) and to the entities that elect to participate in the program. Because of the voluntary nature of participation in TIFIA, this regulatory action is not anticipated to impose any costs upon non-participants. The DOT requests comments, information, and data from the public and potential users concerning the economic impact of implementing this rule and the TIFIA program.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601–612) requires an assessment of the extent to which proposed rules will have an impact on small business or other small entities. Consistent with the Regulatory Flexibility Act, the DOT has evaluated the effects of this rule on small business or other small entities. The NPRM proposes to implement a Federal Credit assistance program for surface transportation projects. There will be a substantial economic impact on the projects funded. However, the DOT anticipates that few, if any, of the applicants for assistance, will be small entities as defined by the Small Business Administration. For example, applicants are likely to include States and large public, or quasi-public entities. In addition, although it is difficult to judge how many applications will be received, we anticipate that the DOT will offer credit assistance to no more than a handful of projects each year. Based on that evaluation, the DOT hereby certifies that this action would not have significant economic impact on a substantial number of small entities. The DOT invites public comment on this determination.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This proposed rule would not impose a Federal mandate resulting 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. The rule simply implements a Federal credit assistance program.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The DOT has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The bases for this determination are that a) eligibility for assistance under this program extends to both private and public entities; and b) the recipients of credit under this voluntary program will receive a benefit, rather than incur costs, through participation. The DOT invites public comment on this determination.

Executive Order 12372 (Intergovernmental Review)

Given that projects receiving assistance under TIFIA may fall under the programmatic jurisdiction of the FHWA, the FRA, or the FTA, the relevant Catalog of Federal Domestic Assistance Program Numbers are: 20.205 highway planning and construction; 20.310 Rail rehabilitation and improvement; and 20.500 transit capital improvement grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*); specifically, that fewer than ten respondents, as defined in 5 CFR 1320.3, are anticipated. Based upon preliminary assessments, research reports, meetings with focus groups and discussions with potential respondents, the DOT anticipates approximately six respondents to the application annually. If in the future, the DOT anticipates ten or more respondents annually, immediate steps will be taken to seek approval from OMB for an information collection, as required under the Paperwork Reduction Act.

National Environmental Policy Act

As specified under § 1503 of TIFIA, and codified under § 182(c)(2) of title 23, U.S.C., each project obtaining assistance under this program is required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). This rulemaking simply provides the procedure to apply for credit assistance; therefore, by itself, this rulemaking will not have any effect on the quality of the environment.

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 may be used to cross-reference this action with the Unified Agenda. The agency-specific proposed common rule appears at the end of this common preamble.

List of Subjects in 23 CFR Part 180 and 49 CFR Parts 261 and 640

Credit programs—transportation, Highways and roads, Mass transit, Railroads, Investments, Reporting and recordkeeping requirements.

Text of the Common Proposed Rule

The text of the common proposed rule appears below:

PART __—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.

____.1 Purpose.
____.3 Definitions.
____.5 Limitations on assistance.
____.7 Application process.
____.9 Federal requirements.
____.11 Investment-grade ratings.
____.13 Threshold criteria.
____.15 Selection criteria.
____.17 Charges.
____.19 Reporting requirements.

Authority: 23 U.S.C. 180–189 and 315; secs. 1501 *et seq.*, Public Law 105–178, 112 stat. 107, 241, as amended, 49 CFR 1.48.

§ ____.1 Purpose.

This rule implements a Federal credit assistance program for surface transportation projects.

§ ____.3 Definitions.

Eligible project costs means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of:

(1) Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities;

(2) Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(3) Capitalized interest necessary to meet market requirements, reasonably

required reserve funds, capital issuance expenses, and other carrying costs during construction.

Federal credit instrument means a secured loan, loan guarantee, or line of credit authorized to be made available under this subchapter with respect to a project.

Investment-grade rating means a rating category of BBB minus, Baa3, or higher assigned by a rating agency to project obligations offered into the capital markets.

Lender means any non-Federal qualified institutional buyer as defined in § 230.144A(a) of title 17, Code of Federal Regulations, known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), including:

(1) A qualified retirement plan (as defined in § 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

(2) A governmental plan (as defined in § 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

Line of credit means an agreement entered into by the Secretary with an obligor under § 184 of title 23, United States Code, to provide a direct loan at a future date upon the occurrence of certain events.

Loan guarantee means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

Local servicer means:

(1) A State infrastructure bank established under title 23; or

(2) A State or local government or any agency of a State or local government that is responsible for servicing a Federal credit instrument on behalf of the Secretary.

Obligor means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

Project means:

(1) Any surface transportation project eligible for Federal assistance under title 23 or chapter 53 of title 49, United States Code.

(2) A project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

(3) A project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation, and components of magnetic levitation transportation systems; and

(4) A project for publicly owned intermodal surface freight transfer facilities, other than seaports and airports, if the facilities are located on or adjacent to National Highway System routes or connections to the National Highway System.

Project obligation means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

Rating agency means a bond rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

Secured loan means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under § 183 of title 23, United States Code.

State means any one of the fifty states, the District of Columbia, or Puerto Rico.

Subsidy amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*).

Substantial completion means the opening of a project to vehicular or passenger traffic.

TIFIA means the Transportation Infrastructure Finance and Innovation Act of 1998.

§ ____.5 Limitations on assistance.

(a) The total amount of Federal credit offered to any project receiving credit assistance under this part shall not exceed 33 percent of the anticipated eligible project costs.

(b) Costs incurred prior to a project sponsor's submission of an application for credit assistance may be considered in calculating eligible project costs only upon approval of the Secretary. In addition, applicants shall not include application charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among the eligible project costs.

(c) No costs financed internally or with interim funding may be refinanced under this part later than a year following substantial completion of the project.

(d) Within the overall credit assistance limitation of 33 percent of eligible project costs, the DOT may consider making multi-year contingent commitments of budget authority and associated credit assistance for especially large projects with extended construction periods and financing needs. In this instance, any reservation of future-year funding shall be made through a letter of intent and shall be contingent on the project's demonstrating satisfactory progress to the DOT. Depending on the overall demand for credit assistance under this part, the DOT may limit such contingent commitments to 50 percent of the budget authority becoming available in the applicable future years. If such a multi-year commitment is made, each year's loan will be tied to distinct, clearly identified project segments or stages.

§ ____.7 Application process.

(a) Public and private applicants for credit assistance under this part will be required to submit applications to the DOT in order to be considered for approval by the Secretary of Transportation.

(b) At a minimum, such applications shall provide:

(1) Documentation sufficient to demonstrate that the project satisfies each of the threshold criteria in § ____.13 and describe the extent to which the project satisfies each of the selection criteria in § ____.15.

(2) Background information on the project for which assistance is sought, such as the project's description, status of the environmental permitting process, and construction schedule;

(3) Background information on the applicant and/or project sponsor;

(4) Historical information, if applicable, concerning the applicant's financial condition, including, for example, independently audited financial statements and certifications concerning bankruptcies or delinquencies on other debt; and

(5) Current financial information concerning both the project and the applicant, such as sources and uses of funds for the project and a forecast of cash flows available to service all debt instruments.

(c) An application for a project located in or sponsored by more than one State or other entity shall be submitted to the DOT by just one State or entity. The sponsoring States or entities shall designate a single obligor for purposes of applying for, receiving, and repaying TIFIA credit assistance.

(d) Each fiscal year for which Federal assistance is available under this part, the DOT will publish a **Federal Register** notice to solicit applications for credit assistance. Such notice will specify the relevant due dates, the estimated amount of funding available to support TIFIA credit instruments for the current and future fiscal years, contact name(s), and other details for that year's application submissions and funding approvals. The DOT will also maintain a centralized mailing list for sending notices to prospective applicants.

§ ____.9 Federal requirements.

All projects receiving credit assistance under this part shall comply with:

(a) the relevant requirements of title 23 of the United States Code for highway projects, chapter 53 of title 49, United States Code, for transit projects, and § 5333(a) of title 49, United States Code, for rail projects, as appropriate;

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*);

(c) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*);

(d) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*); and

(e) other Federal and compliance requirements as may be applicable.

§ ____.11 Investment-grade ratings.

(a) The full funding of a secured (direct) loan, loan guarantee, or line of credit shall be contingent on the assignment of an investment-grade rating by a recognized bond rating agency to all project obligations that have a lien senior to that of the Federal credit instrument on the pledged security.

(b) An investment-grade rating must be received before the DOT will disburse any funds.

§ ____.13 Threshold criteria.

(a) To be eligible to receive Federal credit assistance under this part, a project shall meet the following five threshold criteria:

(1) The project shall be included in a State transportation plan and, at such time as the DOT and project sponsor initially execute a credit agreement, in an approved State Transportation Improvement Program.

(2) The State, local servicer, or other entity undertaking the project shall submit a project application to the Secretary of Transportation;

(3) A project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the State in which the project is located (in the case of a project principally involving the installation of Intelligent Transportation Systems (ITS), eligible project costs shall be reasonably anticipated to equal or exceed $30 million);

(4) Project financing shall be repayable, in whole or in part, from tolls, user fees or other dedicated revenue sources; and

(5) In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be included in the State transportation plan and an approved State Transportation Improvement Program as provided in paragraph (a)(1) of this section.

(b) With respect to paragraph (a)(3), for a project located in more than one State, the minimum cost threshold size shall be the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the participating State that receives the least amount of such funds.

(c) With respect to paragraph (a)(4), the DOT will not consider current or future Federal funds, regardless of source, to be a dedicated revenue source.

§ ____.15 Selection criteria.

(a) The Secretary shall consider the following eight criteria in evaluating and selecting among eligible projects to receive credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system;

(2) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment;

(3) The extent to which such assistance would foster innovative public-private partnerships and attract private debt or equity investment;

(4) The likelihood that such assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed;

(5) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhances the efficiency of the project;

(6) The amount of budget authority required to fund the Federal credit instrument made available;

(7) The extent to which the project helps maintain or protect the environment;

(8) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project.

(b) In addition, section 182(b)(2)(B) of title 23, United States Code, conditions a project's approval for credit assistance on receipt of a preliminary rating opinion letter indicating that the project's senior obligations have the potential to attain an investment-grade rating.

(c) The DOT shall evaluate each project's distinct public benefits (including personal and freight mobility, economic development, and impact on international competitiveness) and contribution to program goals (including leverage of the Federal contribution and increased private investment in surface transportation infrastructure).

(d) The DOT may give preference to those projects for which the total Federal contribution (including both credit and grant assistance from any Federal source) requested is small. This preference supports the policy goal of the DOT to position itself as a minority-share investor in any project receiving credit assistance under TIFIA to induce significant private co-investment.

(e) The DOT may also give preference to applications for loan guarantees rather than other forms of Federal credit assistance. This preference is consistent with Federal policy that, when Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990, deeper than can be provided by a loan guarantee.

§ ____.17 Charges.

(a) The DOT will require a non-refundable application initiation charge for each project applying for credit assistance under TIFIA. The DOT may also require an additional credit processing charge for projects selected to receive assistance. The proceeds of any such charges will cover a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For fiscal year 1999, the DOT will require an application initiation charge of $5,000 for each project applying for credit assistance under TIFIA. The DOT will not require any credit processing charges for fiscal year 1999. For fiscal years 2000 and beyond, the DOT may

adjust the amount of the application initiation charge, and will determine the appropriate amount of the credit processing charge, based on early program implementation experience in fiscal year 1999.

(b) Applicants shall not include application charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) in the total project cost for the purposes of calculating the 33 percent credit limitation referenced in § ____.5(a).

(c) If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the Secretary may increase the application initiation charge or the credit processing charge on the approved applicant to reduce the subsidy cost of that project. No such fees or charges may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount of TIFIA assistance under § ____.5.

§ ____.19 Reporting requirements.

At a minimum, any recipient of Federal credit under this part shall submit an annual project performance report and audited financial statements to the DOT within 120 days following the recipient's fiscal year-end for each year during which the recipient's obligation to the Federal Government remains in effect. The DOT may conduct periodic financial and compliance audits of the recipient of credit assistance, as determined necessary by the DOT. The specific credit agreement between the recipient of credit assistance and the DOT may contain additional reporting requirements.

1. The Federal Highway Administration proposes to add part 180 to 23 CFR Chapter I as set forth at the end of the common preamble.

2. The Federal Railroad Administration proposes to add part 261 to 49 CFR Chapter II as set forth at the end of the common preamble.

3. The Federal Transit Administration proposes to add part 640 to 49 CFR Chapter VI as set forth at the end of the common preamble.

Appendix ____—Application Checklist

Note: This appendix will not appear in the Code of Federal Regulations.

The DOT is in the process of developing a standard application form for credit assistance for surface transportation projects. This appendix specifies the documentary materials that the DOT is considering for inclusion in the standard application form. The following list of information items derives, in part, from the DOT's research concerning State and Federal credit assistance programs, as well as internal DOT guidance. The following list of items potentially to be included in a standard application form is being provided for public comment.

a. Summary of how the proposed project satisfies each of the threshold criteria in § ____.13 and the extent to which it satisfies each of the selection criteria in § ____.15 of this part. (Each criterion should be addressed separately by the applicant).

b. Project information.

1. Detailed description of the project, including type of project, geographic location, economic impact, public benefits, and purpose or purposes.

2. Documentation sufficient to demonstrate the project's current inclusion in the long-range State transportation plan and anticipated inclusion in the State Transportation Improvement Program (STIP).

3. Copies of permits and approvals required by local, regional, State, and Federal agencies, including environmental and other permits and approvals, and other documentation sufficient to demonstrate compliance with other statutory and regulatory requirements.

4. Documentation specifying the project's status with regard to conformance with the National Environmental Policy Act of 1969 (NEPA).

5. Description of project construction phases and timeline.

6. Description of the current condition of all facilities relating to the project.

7. Description of the maintenance and operation plan for the project.

c. Applicant information.

1. Legal applicant's name, headquarters address, mailing address, phone and fax numbers.

2. Primary contact person's name, title, address, phone and fax numbers.

3. Full description of type of sponsoring entity (general partnership, limited partnership, corporation, other), the parties forming the entity, and the date on which the entity was established.

4. Applicant's tax identification number.

5. Name of the entity that will exercise ownership control of project.

6. Names of the entities charged with planning, developing, and operating the project.

7. Names of various other parties involved in the project with description of responsibilities and evidence of agreements or commitments.

8. Disclosure of current or past litigation involving the parties that will own, plan, develop and/or operate the project.

d. Historical financial information relating to the applicant.

1. Signed, audited financial statements.

2. Credit references or release forms.

3. Federal income tax returns.

4. Certification and/or resolution of any delinquency or default on Federal debt.

5. Bankruptcy history.

e. Initial financial plan for the project.

1. Initial total cost estimate.

i. Costs of feasibility studies.

ii. Costs of preliminary engineering.

iii. Costs of environmental assessment.

iv. Costs of right of way.

v. Costs of construction.

vi. Costs of construction engineering/inspection.

vii. Costs of project management.

viii. Costs relating to financing.

ix. Proposed cost containment strategies (e.g., design-build, use of cost control teams, management cost control strategies, and value engineering).

2. Implementation plan for the project.

i. Schedule, presented in annual increments, for completing and operating the project based on initial base year costs adjusted for inflation and any cost escalation.

ii. Methodology for all cost assumptions.

iii. Sources of potential future cost estimates (e.g., environmental costs, litigation costs, overtime costs, and value engineering savings).

3. Funding sources: all proposed sources and uses of project funds presented as annual amounts.

i. Supporting documentation to verify the availability of all sources of public and private funding.

ii. Comparison of annual amounts available for project obligations versus annual obligation needs.

4. Cash flows: Long-term pro-forma cash flow projection clearly delineating all cash flows by category (revenues and expenses) and subcategory (e.g., operations and maintenance, debt service to senior bondholders, debt service to the Federal Government, reserves) and specifying coverage ratios for each year.

5. Type of Federal credit assistance that the applicant is requesting and proposed terms (e.g., amount, maturity, allowances for prepayment and deferral).

6. Proposed timing and use of disbursements of requested Federal credit assistance.

7. Proposed collateral/security for Federal credit assistance.

8. Copy of preliminary rating opinion letter on senior debt obligations from at least one nationally recognized rating agency.

9. Copy of narrative financial analysis and/or feasibility study, including documentation to support revenue projections, such as traffic studies and regional economic projections, as applicable.

10. For loan guarantees, additional documentation including copies of the obligation agreement between the proposed guaranteed lender and borrower, background information on the proposed guaranteed lender, and other data specifically pertaining to a loan guarantee.

f. Any other information which the DOT may deem necessary for project evaluation and selection.

Issued in Washington, DC on January 28, 1999.

Kenneth R. Wykle,

Federal Highway Administration Administrator.

Jolene M. Molitoris,

Federal Railroad Administration Administrator.

Gordon J. Linton,

Federal Transit Administration Administrator.

[FR Doc. 99–2637 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–244–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio is proposing revisions to section 1513–3–21 of the Ohio Administrative Code (OAC) as it relates to awards of costs and expenses, including attorney's fees, arising in connection with appeals heard by the Reclamation Commission. The amendment is intended to revise the Ohio program to be consistent with its statute at Ohio Revised Code (ORC) § 1513.13(E) as well as the corresponding Federal regulations.

DATES: If you submit written comments, they must be received by 4:00 p.m., [E.D.T.] March 10, 1999. If requested, a public hearing on the proposed amendment will be held on March 5, 1999. Requests to speak at the hearing must be received by 4:00 p.m., on February 23, 1999.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to George Rieger, Field Branch Chief, at the address listed below.

You may review copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220, Telephone: (412) 937–2153.

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43244, Telephone: (614) 265–1076.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34688). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated January 21, 1999 (Administrative Record No.OH–2177–00) Ohio submitted proposed amendments to its program concerning award of costs and fees in connection with appeals heard by the Reclamation Commission. Ohio submitted the proposed amendments at its own initiative. The changes proposed by Ohio in the amendment are discussed briefly below:

OAC 1513–3–21 Award of costs and expenses.

(a) Paragraphs (A) and (B) are amended by changing the reference from the ''board of review'' to the ''Reclamation Commission'' and specifically requiring that a petition for costs and expenses including attorney's fees be submitted in accordance with Section 1513.13(E) and (E)(1)(c) of the ORC.

(b) New paragraph (C) is added to specify that a decision by the Chief of the Division of Mines and Reclamation granting or denying in whole or in part a request for an award of costs and expenses including attorney's fees made under Section 1513.13(E)(1)(a) or 1513.13(E)(1)(b) of the ORC shall be appealable to the commission under Section 1513.13(A) of the ORC.

(c) Existing Paragraph (C) pertaining to the contents of a petition is re-numbered as (D) and further amended by including the specific references to the ORC included in (a) and (b) above.

(d) Existing Paragraphs (D),(E) and (F) are re-numbered as (E), (F), and (G) and are further amended by changing the references from the board to the Reclamation Commission.

III. Public Comment Procedures

According to the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we determine the amendment to be adequate, it will become part of the Ohio program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [E.D.T.] on February 23, 1999. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow us to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.