(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 393

[Docket No. MARAD–2010–0035]

RIN 2133–AB70

America's Marine Highway Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: On October 9, 2008, the Department of Transportation published an interim final rule that established America's Marine Highway Program, under which the Secretary will designate marine highway corridors and identify and support short sea transportation projects to expand domestic water transportation services as an alternative means of moving containerized and wheeled freight cargoes; mitigate the economic, environmental and energy costs of landside congestion; integrate the marine highway into the transportation planning process; and research improvements in efficiencies and environmental sustainability. This action is required by Public Law 110–140, the Energy Independence and Security Act of 2007. The interim final rule solicited comments, which are discussed in the "Section by Section Review" below and incorporated in this final rule. In addition, the interim final rule sought recommendations for designation of Marine Highway Corridors. This rule adopts the interim final rule, addresses Marine Highway Corridors (and continues to solicit recommendations for Marine Highway Corridor recommendations), and establishes eligibility requirements, criteria and information necessary to apply for designation as a Marine Highway Project by the Secretary of Transportation. Solicitations from applicants desiring Marine Highway Project designation will be initiated through notification in the **Federal Register** at a future date. This rule also sets forth the manner in which the Department of Transportation will identify and recommend solutions to impediments to expanded use of marine highways and lays the groundwork for coordinating with States, private transportation providers, and local and Tribal governments, and conducting research related to marine highway development. The program should improve system capacity and efficiency, air quality, highway safety, and national security.

DATES: This final rule is effective April 9, 2010.

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,* 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

Following the current economic slowdown, experts project that cargoes moving through our ports will return to pre-recession levels. In fact, freight tonnage of all types, including exports, imports, and domestic shipments, is expected to grow 73 percent by 2035 from 2008 levels ["Freight Facts and Figures 2009", U.S. Department of Transportation, Federal Highway Administration, Office of Freight Management and Operations; Table 2–1; November 2009]. The development of a capable, cost-effective, safe and resilient transportation system is essential to handling the movement of this cargo in a manner that is efficient with respect to cost, energy usage, and environmental consequences. Since nearly all international cargos move along our surface transportation corridors to access or depart from seaports, which are major gateways for commerce, getting such cargoes to and from the major seaports could involve more usage of marine corridors to and from smaller and medium-sized maritime ports.

The challenges faced by our nation's transportation planners and policymakers involve making better use of existing infrastructure, addressing the need for more capacity in our freight corridors, and reducing the environmental impacts of transportation. In recent years, it has become increasingly evident that the Nation's existing road and rail infrastructure cannot adequately meet our future transportation needs. Land-based infrastructure expansion opportunities are limited in many critical bottleneck areas due to geography or very high right-of-way acquisition costs. This is particularly severe in urban areas where there are additional concerns about emissions from transportation sources. Investments in additional infrastructure, particularly highways, must consider the full costs to society of more greenhouse gas emissions and pollutants and, potentially, the need to pay for such emissions in future transportation fees. Accordingly, new road and rail investments may not be feasible, desirable, or cost-beneficial in many instances.

The cost of expanding our existing land-based transportation systems, along with transportation efficiency and environmental concerns, has caused many policymakers to re-focus on the underutilized transportation capacity of the Nation's waterways. To help address these challenges, America's Marine Highways can represent a viable alternative where water transportation is an option. Expanding the Marine Highways can be done in a way that reduces emissions, will require less new infrastructure than land transportation alternatives, generates significant fuel savings, and can increase resiliency in the surface transportation system. The Marine Highways, consisting of more than 25,000 miles of inland, intracoastal, and coastal waterways, have considerable room for expansion. [U.S. Army Corps of Engineers, "Waterborne Commerce of the United States" (2005).] In fact, while the inland river system, Great Lakes, and coastal fleets still move a billion metric tons of cargo each year, less than 4 percent of the Nation's domestic freight (by volume) now moves by water. However, this is down from 1957 levels, when over 31 percent moved by water ["National Transportation Statistics 2009," U.S. Department of Transportation, Research and Innovative Technology Administration—Bureau of Transportation Statistics; Table 1–52: Freight Activity in the United States: 1993, 1997, 2002, and 2007].

Water transportation can be expanded quickly and at little incremental cost to meet freight traffic needs. In addition to offering abundant and reliable capacity under normal conditions, waterways provide critical resiliency to the transportation system during emergencies when land-based freight and passenger delivery systems are damaged. Especially in urban areas, the movement of both freight and passengers by waterway can represent an excellent opportunity to improve

livability and quality of life for communities.

In recognition of the growing need to address concerns about land-based transportation efficiencies and sustainability, Congress enacted the Energy Independence and Security Act of 2007 (Energy Act), a sub-title of which requires the Secretary of Transportation (Secretary) to "establish a short sea transportation program and designate short sea transportation projects to be conducted under the program to mitigate surface congestion" [Energy Independence and Security Act of 2007, Subtitle C—Marine Transportation; Sec. 1121 Short Sea Transportation Initiative]. Among the primary program objectives listed in the Energy Act is to reduce surface congestion to maximize public benefits that include, but are not limited to, improved air quality, highway safety, and national security. Of principal concern to the Energy Act is the movement of intermodal containerized and wheeled cargos which currently move largely by rail and truck, often under congested surface conditions.

The America's Marine Highway Program envisioned by the Department of Transportation will implement the Energy Act's requirements for short sea shipping by working to bring about a seamless, energy-efficient, and climate-friendly transportation system through the creation and expansion of domestic water transportation services. To achieve these overall objectives, the program will include the development of marine highway corridors, identification and support of specific marine highway projects, the integration of the marine highway into the transportation planning process, and research to improve efficiencies and environmental sustainability. This will be accomplished through an organized outreach effort to State and local governments, private transportation providers and Tribal governments, by leveraging recent discretionary Federal transportation grants (the Transportation Investments Generating Economic Recovery, or "TIGER," Program) to realize the inherent advantages of these types of services, and working to remove impediments and identify incentives to optimize system performance.

The goal of America's Marine Highway Program is to develop and integrate these services into the overall transportation system in a self-sustaining, commercially-viable manner that also recognizes the public benefits these services create. The Marine Highway will enable more goods and people to travel by water where possible, striking a more equitable capacity balance between highway, rail and Marine Highway surface routes, making it more likely our country will realize the benefits sought by the Congress.

Discussion of Comments Received

The Department of Transportation received 95 documents reflecting 319 comments, including almost 60 corridor recommendations, to the interim final rule during the public comment period ending February 6, 2009. The largest group of commenters was 32 port authorities, followed by 21 private interests representing various types of carriers, 14 organizations representing maritime and environmental interests and 12 State departments of transportation. The remaining comments came from Congressional representatives, individual private interests, and city/county transportation and planning entities. The vast majority of comments were supportive of the Marine Highway Program.

Generally speaking, comments received can be separated into five categories:

The first category of comments consisted of more than 60 comments in general agreement with the rulemaking and did not propose any changes to the rule.

The second category of comments contained nearly 40 suggestions that would require changes to the Energy Independence and Security Act of 2007, United States Code or other Federal Statutes and, therefore, could not be incorporated into the rule. Where appropriate, these comments are summarized in the section-by-section discussion.

The third category of comments consisted of more than 100 corridor recommendations, endorsements of recommendations, or comments that addressed specific services, systems, proposals or geographic areas. Of these, 30 are related either to the definition of Marine Highway Corridors, or suggestions on how to interpret corridors as they are defined in the Interim Final Rule. Ten comments supported corridor recommendations made by other entities. Corridor recommendations are addressed in section 393.3 (Marine Highway Corridors) of this rule. Another ten comments in this grouping were deemed more appropriate to the development of potential future Marine Highway Project applications and are not addressed in this rule.

The fourth category of about 40 comments consisted of remarks and suggestions that are either beyond the scope of the Marine Highway Program, or determined not appropriate incorporation for incorporation in the final rule. However, because these may be helpful to other programs, they have been provided to appropriate Federal entities and summarized in the applicable section-by-section discussion.

Six comments in this category proposed that the Marine Highway Program be fully funded through upcoming Surface Transportation Reauthorization. One comment proposed that the Department of Transportation receive funding to execute the research component of the program in order to establish a nationwide approach to the challenges facing vessel and terminal design, construction, and other system needs. Another suggested that the Department of Transportation identify research funding to examine issues related to Marine Highway Implementation. Nine other comments proposed inclusion of Canadian Maritime Provinces and Mexico in the program. Other suggestions addressed worker compensation rights, maritime academies, and other activities beyond the scope of the Marine Highway Program. Numerous comments (40) proposed specific incentives or solutions to perceived impediments to expansion of the marine highways. Of these, the greatest number of comments (13) focused on the degree to which collection of Harbor Maintenance Tax acts as an impediment to the development of the Marine Highway Program and all proposed waiving the tax for domestic waterborne freight and passenger movements. This ad valorem tax is charged on cargoes imported to the U.S. and pays for channel dredging that allows access for deep draft ships to U.S. ports. However, in its current form, the same cargo is subjected to the tax a second time if it moves from the port of arrival to another U.S. destination by water. The tax is not charged if this second movement of the cargo is by landside modes.

The final category of comments contained more than 75 suggestions that could be implemented at the discretion of the Secretary of Transportation. The Department of Transportation was open to all suggestions in this category and gave them careful consideration. These comments, along with the Department of Transportation's response, are captured in the section-by-section discussion that follows.

Section-by-Section Discussion

This section discusses comments submitted on each section of the rule

along with an explanation of any changes that have been made from the Interim Rule to the Final Rule. All references to revisions or changes refer/pertain to language that was originally proposed in the Interim Final Rule, as amended.

Section 393.0

The Department of Transportation received 28 comments specifically pertaining to the summary and environmental assessment portions of the program introduction. Six comments related to types of cargo covered by the Marine Highway Program and nine comments pertained to the inclusion of Mexico and Canada's Maritime Provinces. These comments will be addressed in section 393.2 (Definitions). While many comments asserted that expanding Marine Highway use will have positive impacts on the environment, five commenters made specific recommendations regarding this section. These comments are discussed below.

Environmental Considerations

The Department of Transportation received comments from five respondents on this section regarding three general areas: National Environmental Policy Act compliance, the Endangered Species Act, and the Clean Air Act, which are addressed individually below:

National Environmental Policy Act (NEPA): Commenters suggested that a programmatic environmental review be conducted for the America's Marine Highway Program prior to issuance of the final rule to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The proposed rule for the America's Marine Highway Program is promulgating procedural rules for how Marine Highway Corridors will be designated, and the procedure for proposing Marine Highway Projects. These new regulations do not amount to a major Federal action requiring NEPA analysis because the regulations are procedural in nature and only set forth protocol for future actions that would be subject to NEPA. *See Piedmont Environmental Council* v. *Federal Energy Regulatory Commission,* 558 F.3d 304, 315–17 (4th Cir. 2009). Designation of Marine Highway Corridors will only identify existing landside corridors that could, in the future, benefit from marine transportation. The location, scope and nature of any new or expanded services are not yet known. In addition, the extent of any Federal action, including funding (if any) is not yet known. Conducting an environmental review pursuant to NEPA will not provide a meaningful analysis until: (1) There is a concrete determination of what role the Federal government might play in encouraging such services, (2) the geographic footprint of the program is determined and; (3) potential Marine Highway projects are proposed. Without this information, a NEPA analysis would not present a credible forward look and would therefore not be a useful tool for basic program planning. Once project applications are received, an environmental review under NEPA will be conducted to assess the environmental effects of the proposed project(s). *See* Piedmont, 558 F.3d at 317 (4th Cir. 2009). The Environmental Considerations and other sections of the rule were revised to reflect this and to clarify the topic.

—Part of section 393.3(d) was separated into section 393.3(c) in order to more clearly note the procedural requirements for submitting requests for corridor designations and the actions which may be taken by the Department of Transportation after a corridor has been designated.

—Section 393.4(d) has been supplemented to include language that indicates the Department of Transportation will also evaluate projects or groups of projects along a corridor based on the results of an environmental review.

—Section 393.4(e)(3) has been supplemented to include language to provide greater guidance on the information necessary for the Department of Transportation to conduct the environmental review of the proposed project or groups of projects along a corridor.

One commenter noted that the Maritime Administration is required to comply with its own Administrative Order 600–1 (Procedures for Considering Environmental Impacts). As required by the order, the Coordinator of Environmental Activities has been, and will continue to be consulted regarding the program to ensure appropriate and timely actions and compliance with the Agency order. Additionally, to ensure a continuing dialogue with environmental interests, the Department of Transportation is establishing a new advisory board under section 393.5(e) to identify impediments and recommend solutions to increased use of the Marine Highway.

These respondents also noted that, in evaluating the overall benefits or impacts on the public and the environment and other factors, all aspects should be considered, including shifts in routes and congestion, redistribution of land-based transportation and cargo handling infrastructure, and negative impacts of new or increased waterway use. The Department of Transportation agrees that there are a number of factors that will have to be considered and appreciates the respondents' suggestions. The Department intends to use the Marine Highway Project application and review process to identify the appropriate factors and collect relevant information for the assessment including whether or not some individual projects should be grouped (*e.g.,* along a corridor) under a single NEPA analysis as appropriate.

Endangered Species Act: Two respondents recommended that the Department of Transportation take actions, as appropriate under the Endangered Species Act (ESA), including commencement of the consultation process under section 7 of the ESA. Without specific project proposals, however, this action would be premature for this rulemaking.

Clean Air Act: Two commenters noted that approval of individual Marine Highway Projects may involve specific actions under the Clean Air Act in cases where State Implementation Plans are required. The Department of Transportation notes the comment and continues to work closely with the EPA in development of this program.

Green Shipping Design and Operation: Two commenters noted that there are a number of affirmative actions that the Department of Transportation can take to maximize the benefits and minimize any adverse impacts of Marine Highway services, both in the short and long term. The Department of Transportation agrees. The Department of Transportation has engaged government and academia to begin development of a program that recognizes the activities of Marine Highway service providers (both afloat and shoreside) that exceed current standards of responsibility in emissions reduction, energy conservation, ballast and discharge water management, endangered species protection, and other categories. Several elements of projects are also intended to address environmental responsibility, including potential relief for surface transportation congestion related environmental, energy or safety benefits (in the form of reduced vehicle miles traveled). In addition, language in Section 393.4(e) (Application for Designation as a Marine Highway Project) has been revised to both encourage participation in and provide documentation of participation

in environmental or other conservation programs.

Section 393.1 Purpose

The Agency received only one comment regarding this section. The commenter suggested expanding the statement regarding the goals of Marine Highway Project Designations (Section 393.1(b)(2)) to go beyond designating Marine Highway Projects solely to "mitigate landside congestion," arguing that the summary goes on to further identify the goal of providing "greatest benefit to the public." While the Act specified the purpose of project designation, the Government Accountability Office (GAO), in a report on this topic entitled, "Freight Transportation: Short Sea Shipping Option Shows Importance of Systematic Approach to Public Investment Decisions (July 2005)" (GAO–05–768, July 2005), proposed that public involvement should be determined based on "public benefits," with which the Department of Transportation concurs. This paragraph (and the Purpose statement in Section 393.4(b)) was revised to more clearly articulate these complementary objectives.

Section 393.2 Definitions

The Agency received more than 30 comments that are best addressed in this section. Comments focused on the definition, scope or application of Marine Highway Corridors, proposed means of configuring or grouping corridors and water routes that have no corresponding landside transportation corridors, the inclusion of Mexico as well as expanded portions of Canada in the program, cargos to be included within the scope of the program, and entities eligible to be Project Sponsors.

Marine Highway Corridor: The Department of Transportation received 11 comments addressing the definition of a Marine Highway Corridor, or suggesting how corridors should be viewed. Comments included whether a port/terminal is included in a "Marine Highway Corridor," and suggested that smaller ports and terminals, including niche ports that handle specific commodities and passengers should be included in corridors. After further consideration of these comments and the intended purpose of Marine Highway Corridors, the Department of Transportation amended the definition to be broader and more descriptive of the land route that Marine Highway expansion would benefit than the waterways, ports and terminals that actually provide the relief. This is more consistent with the Act's language that calls for the designation of short sea transportation routes as "extensions of the surface transportation system," and its purpose to "focus public and private efforts to use the waterways to relieve landside congestion along coastal corridors."

Several comments suggested delineation of routes by either National or Regional significance, and proposed that short distance, cross harbor or inter-terminal services can also provide significant relief. The Department of Transportation concurs that both short and long distance services could offer considerable benefit, and amended the definition of Marine Highway Corridors to include "crossings" and "connectors" to address short-distance or regionally significant routes.

Additionally, several comments were received that indicated either an assumption or a recommendation to include routes or services that do not have a landside alternative, and cannot therefore relieve landside congestion. These include routes and services to Hawaii, Guam and other territorial islands. Because these routes (and services) cannot meet the program's stated purpose of relieving landside congestion, the Department of Transportation believes the inclusion of these routes or associated services falls outside the scope of the Act, and cannot be part of the Marine Highway Program. This clarification has been incorporated in the definition of Marine Highway Corridor.

Marine Highway (or Short Sea Transportation): The Department of Transportation received nine comments recommending the inclusion of Mexico and the Maritime Provinces of Canada in the definition of Marine Highway under this program. In crafting this definition, the Department of Transportation was mindful of the Act that authorized this program, which did not include Mexico, or these portions of Canada in its language. Therefore the international portion of the definition was not changed. However, it is worth noting that—outside the scope of this program—the Department of Transportation entered into a tri-lateral agreement in May 2006 with Canada and Mexico to seek opportunities to work together and expand short sea shipping services where practicable, and this initiative will continue to receive the Department of Transportation support outside of this program. Six comments were received proposing that eligible cargos be expanded to include bulk, break-bulk and heavy lift cargo. However, Section 55605 of the Energy Act defines short sea transportation as "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" (also reflected in "Summary" section of the Interim Final Rule). The Department of Transportation believes that the addition of bulk, break-bulk or heavy lift cargos would go beyond the scope of the authorizing legislation. However, three comments suggested that car floats or rail ferries (vessels equipped with railroad track sections to accommodate wheeled rail cars) be included in the program and the Department of Transportation agrees this meets the scope of the Energy Act. The definition of Roll-on/Roll-off (RO/RO) vessel was expanded to include rail floats.

Project Sponsor: Two comments proposed that private entities be eligible as project sponsors based on the assertion that not doing so adds a layer of difficulty that does not advance the purpose of the rule. The purpose of requiring that project sponsors be public sector entities is that the Department of Transportation believes that, should Federal funding later become available, it is not generally appropriate for the Federal government to select individual companies as the recipient of public funds. Rather, it is appropriate for the Federal government to identify those projects whose stated public benefits, offsetting savings to Federally-funded infrastructure, and likelihood to be sustainable in the long term, represent the best potential for return on public investment. It is up to the regional, State or local public sector project sponsor (including Tribal governments) to identify—through open competition—the private sector entity or entities most able perform the proposed service(s). In light of this approach, the final rule remains unchanged and reflects public sector sponsorship for both marine highway corridors and projects.

Marine Highway Project: One comment suggested that projects should include services that facilitate transfer from international-to-domestic maritime services. Others were unsure if transportation of passengers by water is eligible under the program. The Department of Transportation added language to include a definition of Marine Highway Projects under this section to better clarify the intent and eligibility criteria for projects.

Where appropriate, language elsewhere in the rule was changed to be consistent with these definitions.

Section 393.3 Marine Highway Corridors

The agency received more than 100 comments regarding Marine Highway Corridors. Of these, 59 were

recommendations for designation of specific corridors and several others endorsed a recommendation made by another entity. Other comments addressed the process of corridor designation, noted the benefits of designating corridors, and proposed options that could provide regional, local and border crossing benefits.

Generally speaking, respondents supported designation of Marine Highway Corridors, although one commenter indicated corridors may become a ponderous process with limited benefit. Conversely, another respondent believes it is a valuable way to enlarge the circle of support and engagement and facilitates cooperative arrangements. One commenter expressed concern that both Corridor recommendations and Project applications could require onerous and costly research for entities ill equipped to do so.

Ten comments cited the public benefits of marine highways, including reduced emissions per ton-mile of commercial carriage on the water in contrast to truck or rail. Another ten comments focused on the various consortiums that are, or should be, engaged in the development of marine highways, citing the need for public involvement at the local/State and Federal levels as well as from Tribal governments for private service providers (*i.e.,* carriers), or public-private partnerships. No changes to the rule were necessary in response to these comments, as public benefit and the development of stakeholder coalitions are already key elements of the program.

Numerous comments endorsed the concept of corridor designation and incorporation of DOT's Corridors of the Future and proposed that corridors include ports (both large and small), or "marine exits," harbor crossings and sub-corridors. The Department of Transportation recognizes that major arteries alone, such as the "Corridors of the Future" and others, might not fully encompass these concepts and added the terms "connectors" and "crossings" to Section 393.2 (Definitions). Connectors will provide substantial linkages to the larger corridors and crossings will be defined as short-distance routes that provide relief to congested border crossings, bridges or tunnels or offer a much shorter route than the landside alternative. Section 393.3 was revised to clarify how Marine Highway Corridors will be described and defined and the roles connectors and crossings will play in conjunction with the larger Marine Highway Corridors.

Fifty-nine Marine Highway Corridor recommendations were received in response to the Interim Final Rule. The Department of Transportation is working closely with potential Corridor sponsors to combine complimentary and interconnecting corridor proposals and develop recommended Marine Highway connectors and crossings that offer shorter, but potentially significant, water-bridges and linkages that can relieve significant bottlenecks at the local and regional level. Corridors, connectors and crossings that receive designation by the Secretary will be published on the Maritime Administration's Marine Highway Web site (*http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhi_home.htm*).

Section 393.4 Marine Highway Projects

While several comments received were specific to a single project, marine highway service or geographic area, more than 30 comments related to the content, designation process, or evaluation criteria for Marine Highway Projects. These comments are addressed in this section.

Three commenters noted the complexity of coordinating multiple agencies and entities when projects involve origins and destinations separated by relatively long distances and involving numerous jurisdictions. The Department of Transportation acknowledges this challenge and believes that the proposed approach of designating project sponsors and developing coalitions is an appropriate way to address multi-jurisdictional coordination.

Four comments recommended that the Department of Transportation recognize the benefits of dual-use vessels in Marine Highway Projects. This capability would allow vessels in commercial service to be available to the Department of Defense (DOD) should the need arise. While the Departments of Transportation and Defense recognize the considerable potential for this concept to provide sealift capacity, and are working together toward a dual-use capability with the limited funding that the Department of Defense has available for the incorporation of National Defense Features, policy and protocols are not yet in place to develop a dual-use capability. No changes to the rule are currently warranted, however, future development of the America's Marine Highway Program will incorporate dual-use programs when feasible.

Several comments pertained to Marine Highway Project Applications and the criteria by which they will be evaluated. Five commenters recommended that the Department of Transportation recognize the public benefits that new or expanded services offer in terms of transportation system resiliency and redundancy, especially following natural or man-made events that can cripple landside corridors. The Department of Transportation has modified both the information required in the application (Section 393.4(e)) and the evaluation criteria to reflect this public benefit. Another comment pointed out the additional public benefit that shifting oversize and overweight containerized or trailerized cargo from roadways can offer because these cargos cause a disproportionate amount of damage to road surfaces, bridges and tunnels. Language was added to Section 393.4(e)(1)(D) and the evaluation criteria to address this benefit.

One commenter asserted that project designation should be based primarily on the ability to demonstrate a clear path to profitability. While the Department of Transportation agrees that the ability of a project to ultimately become self supporting is an important criterion, a path to profitability alone does not establish a rationale for governmental involvement in the project, which should instead be based on the potential to produce public benefits. This is also consistent with a public investment approach proposed by the Government Accountability Office report, entitled, "Freight Transportation: Short Sea Shipping Option Shows Importance of Systematic Approach to Public Investment Decisions (July 2005)" (GAO–05–768, July 2005). However, to better clarify this methodology, both the information required in project applications and the weight-based criteria were reorganized in the final rule. Additionally, in recognition that confidential business information may be required to adequately describe the finance plan, a section was added to protect confidential business information.

Two commenters believe that the Marine Highway Program needs strong support throughout DOT's leadership and inquired about the process and means by which Marine Highway Project applications will be evaluated, designated and supported by the Federal government. An inter-agency review team, consisting of both the Department of Transportation and non-Department of Transportation representation will be established for this purpose. Section 393.4(e)(6) titled "Evaluation Process" was inserted into the final rule to address this.

Nine comments were received that recommended the Department of

Transportation establish standard measures to quantify benefits of proposed Marine Highway Projects. Suggestions included specifying the use of "ton-miles" and including a formula to convert to/from twenty-foot equivalent unit (TEU) and forty-foot equivalent unit (FEU) using standard weights. Commenters recommended including standards for diesel emissions, fuel savings, and standards to quantify savings in highway maintenance and bridge maintenance, as well as safety benefits on a per-mile basis. The Department of Transportation believes that development and use of uniform measures, to the extent practicable, would benefit applicants, improve objective review of applications and set the stage for consistent performance measures for projects that receive designation by the Secretary. The Department of Transportation concurs that standards of measure and some basic baseline measures would be beneficial, but applicants should be encouraged to use more accurate or localized data and measures, when available. Section 393.4(e)(3) was added in the final rule, addressing this issue, but the actual standards and measures will be posted on the Maritime Administration's Web site to enable refinement and updating over time.

One commenter noted that, after initial designation, a corridor could expand beyond the original scope in the designation. While the Department of Transportation intends that the Marine Highway Corridors be broadly defined and inclusive of all related ports, both large and small, it is recognized that specific projects could (and hopefully will) find expansion opportunities after designation by the Secretary of Transportation. To address this possibility, Section 393.4(e)(5) was amended to establish a process by which this can be achieved.

Section 393.5 Incentives, Impediments and Solutions

A total of 60 comments were received that either recommended incentives, or identified and recommended solutions for impediments to increased use of America's Marine Highway. Many of these comments could be interpreted as proposing an incentive or addressing specific impediments. Commenters proposed incentives including tax credits, reduced emissions incentives, accelerated depreciation and other mechanisms for shippers, service providers, shipyards and other stakeholders. Other comments recommended subsidies to reduce start-up risk, use of Congestion Mitigation and Air Quality (CMAQ) funding, and other vehicles to stimulate new services and vessel construction. While no changes to the rule were warranted by these comments, the Department of Transportation appreciates the thoughtful suggestions and will take them into consideration in meeting the Energy Act's requirement to develop and propose short-term incentives that would encourage the use of the Marine Highway.

Comments that identified or recommended solutions to impediments to increased use of the Marine Highway had several areas of focus. The greatest number of comments (13) identified the Harbor Maintenance Tax (HMT) as an impediment and recommended waiving HMT for domestic waterborne shipments. One commenter noted that with 18 Federal departments and agencies playing a role in marine transportation policy and operations, the lack of a comprehensive regulatory structure in general represents an impediment to marine highway growth. The 24-hour advance notice requirement for U.S.-Canada services was also identified as an impediment, as the duration of most of these voyages is well under 24 hours. Other comments proposed funding mechanisms for infrastructure, weight handling equipment and port-connectors, increased dredging in the Great Lakes, short-term or temporary modifications to the Jones Act, streamlining or modification of the Title XI loan guarantee program, and changes to worker compensation policy, among other items. No statutory authority currently exists to implement these recommendations. Therefore, no changes to the rule were warranted by these comments, however, the Department of Transportation appreciates this input and will provide these comments to the advisory board that the Energy Act calls for to examine these issues.

One commenter indicated that the program needs to be incorporated into the policies and programs of several Federal departments to address various impediments to marine highway expansion. The Department of Transportation intends to include several key governmental agencies on the advisory board to address these issues, but no change to the rule is needed to achieve this outcome.

Section 393.6 Research on Marine Highway Transportation

The Department received one comment specific to section 393.6. The commenter recommended that the Department of Transportation direct funding for the Maritime Administration to sponsor Marine Highway Research and Development centers that would be provided through Surface Transportation Reauthorization, and be primarily aimed at vessel design (including dual-use DOD/commercial capabilities) and interfacing port/terminal design with emerging vessel characteristics. This comment is beyond the scope of the rulemaking and does not impact the final rule.

Program Description

In this rulemaking, the Department of Transportation adopts as final, with some minor and clarifying changes, the America's Marine Highway Program established by the October 9, 2008, Interim Final Rule. This rulemaking also sets forth more specific 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 Department of Transportation 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 (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. No State, local government or Tribal government raised concerns about federalism in comments regarding the interim final rule. Therefore, we did not consult with State and local officials on

this procedural rule. However, we will act as partners with States and local officials in transportation planning and supporting individual projects under this program.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires us to assess the impact that regulations will have on small entities. After analysis of this final rule, the Department of Transportation certifies that this rule will not have a significant economic impact on a substantial number of small entities, because this rule merely sets forth procedures.

Environmental Impact Analysis

We have analyzed this final 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 does not have an immediate environmental impact. Designation of Marine Highway Corridors will only identify existing landside corridors that could, in the future, accommodate and benefit from expanded marine transportation. The location, scope and nature of any new or expanded services is not yet known. The promulgation of these procedural rules does not therefore significantly affect the environment. In addition, the extent of any Federal action, including funding (if any) is not yet known. NEPA analysis will be conducted when: (1) There is a concrete determination of what role the Federal government might play in encouraging such services, (2) the geographic footprint of the program is determined and; (3) potential Marine Highway projects are proposed. Until this information is available, a NEPA analysis would not present a credible forward look and would therefore not be a useful tool for basic program planning. NEPA analysis will be commenced as soon as sufficient information is available.

Paperwork Reduction Act

This regulation establishes new requirements for designation of a Marine Highway Project and republishes the requirements in MARAD–2008–0096 for designation of a Marine Highway Corridor. Persons seeking designation of a Corridor or Project (if within a designated Marine Highway Corridor) under America's Marine Highway Program are required to submit a written application via U.S. Mail or electronically via *http://www.regulations.gov* (MARAD–2010–0022). Measurements and standards (criteria) for designation of a Marine Highway Project will be published on the Maritime Administration's Web site (*http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhp_trans_planning/mhp_trans_planning.htm*). The format will also be provided.

The information collected will be used to review recommendations for designation as a Marine Highway Corridor or Project and evaluate applications for designation as "America's Marine Highway Corridor" or "America's Marine Highway Project." (The Department of Transportation will keep business information confidential if marked accordingly.) Designated projects will also be published on the Maritime Administration's Web site (*http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhp_project_recommendations/mhp_project_recommendations.htm*).

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.*).

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 $141.3 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 guidance requires the use of a revised threshold figure of $141.3 million, which is the value of $100 million in 1995 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. At this time we believe that designation of Marine Highway Corridors and Marine Highway Projects does not have an impact on Indian Tribal Governments. Following designation, individual Corridor and Project components that may have an impact on Indian Tribes will be determined as they are identified. The Department of Transportation will consult with those Indian Tribal Governments that may be affected by these designations on factors pertaining to program implementation.

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 Department of Transportation amends 46 CFR Chapter II by revising part 393 to read as follows:

PART 393—AMERICA'S MARINE HIGHWAY PROGRAM

Sec.

Authority: Energy Independence and Security Act of 2007, Sections 1121, 1122, and 1123 of Public Law 110–140, enacted into law on December 19, 2007 (121 Stat. 1492).

§ 393.1 Purpose.

(a) This part prescribes final regulations establishing a short sea transportation program as set forth in Sections 1121, 1122, and 1123 of the Energy Independence and Security Act of 2007, enacted into law on December 19, 2007.

(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 (including Connectors and Crossings) 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. They are commercial coastal, inland, and intracoastal waters of the United States, described in terms of the specific landside transportation routes (road or rail line) that they supplement. They support the movement of passengers and cargo along these specified routes and mitigate the effects of landside congestion, such as increased emissions and energy inefficiencies. In addition to corridors, the Secretary may designate Marine Highway "Connectors" and "Crossings" as described in paragraphs (h)(1) and (h)(2) of § 393.2. Through America's Marine Highway Program, the Department will encourage the development of multi-jurisdictional coalitions and focus public and private efforts and investment on shifting freight and passengers from at- or near capacity landside routes to more 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 designate projects that, if successfully implemented, expanded, or otherwise enhanced, would reduce external costs and provide the greatest benefit to the public. Closely linked to congestion relief, public benefits can include, but are not limited to, reduced emissions, including greenhouse gases, reduced energy consumption, reduced costs associated with landside transportation infrastructure maintenance savings, improved safety and transportation system resiliency and redundancy. Additional consideration will be given to Marine Highway Projects that represent the most cost-effective option among other modal improvements. Designated Marine Highway Projects may receive direct support from the Department as described in this section.

(3) Incentives, Impediments and Solutions. This section outlines how the Department, 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, regional, local, and Tribal government transportation planning.

(4) Research. This section describes the research that the Department, 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 may apply 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:

(a) *Administrator.* The Maritime Administrator, Maritime Administration, U.S. DOT, who has been authorized by the Secretary of Transportation to administer America's Marine Highway Program.

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

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

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

(e) *Department.* The U.S. Department of Transportation (DOT).

(f) *Domestic Trade.* Trade between points in the United States.

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

(h) *Marine Highway Corridor.* A water transportation route that serves as an extension of the surface transportation system that can help mitigate congestion-related impacts along a specified land transportation route. It is identified and described in terms of the land transportation route that it supplements, and must, by transporting freight or passengers, provide measurable benefits to the surface transportation route in the form of traffic reductions, reduced emissions, energy savings, improved safety, system resiliency, and/or reduced infrastructure costs. Routes that cannot relieve landside congestion (*i.e.*; those to/from islands) are not eligible for designation under this program. In addition to "Corridors," prospective sponsors can recommend Marine Highway "Connectors" and "Crossings" for designation as described in paragraphs (h)(1) and (h)(2) of this section:

(1) Marine Highway Connectors are routes that will provide substantial linkages to or between the larger corridors, and serve, in conjunction with a corridor, to move freight and/or passengers into, out of or within a region.

(2) Marine Highway Crossings are routes that provide relief to congested border crossings, bridges, and tunnels or offer a shorter route than the landside alternative. Although they may not parallel a corridor or connector, crossings may provide relief to a corridor or connector, or to local or regional passenger and freight transportation systems. Crossings may include cross-harbor and inter-terminal passenger and/or freight services.

(i) *Marine Highway Project.* A new Marine Highway service, or expansion of an existing service, that receives support from the Department and provides public benefit by transporting passengers and/or freight (container or wheeled) in support of all or a portion of a Marine Highway Corridor, Connector or Crossing. Projects are proposed by a project sponsor and designated by the Secretary under this program.

(j) *Marine Highway (or Short Sea Transportation):* The carriage by vessel of passengers and/or cargo (intermodal containers, trailers, car floats, rail ferries and other cargoes loaded by wheeled technology) 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. For the purposes of this specific program, routes and services that do not offer potential relief to a landside transportation route (*i.e.*; to/from islands) do not fall within this definition.

(k) *Project sponsor.* Project sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including State Departments of Transportation), port authorities and Tribal governments, who may submit applications for designation as a Marine Highway Project.

(l) *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. This includes, but is not limited to trailers, car floats and ferries, including rail ferries.

(m) *Secretary.* The Secretary of Transportation.

(n) *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 (including Connectors and Crossings). Corridors will be designated by the Secretary. The goal of this designation process is to accelerate the development of multi-State and multi-jurisdictional Marine Highway Corridors to relieve landside congestion. Designation will encourage public/private partnerships, and help focus investment on those Marine Highway Corridors that offer the maximum potential public benefit in congestion-related emissions reduction, energy efficiency, safety and other areas. Corridors already designated as "Corridors of the Future" under DOT's National Strategy to Reduce Congestion that have commercial waterways that parallel or can otherwise benefit them 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 congestion-related impacts along land transportation routes for freight and passengers.

(3) Obtain public benefit by shifting freight and passengers in measurable terms from land transportation routes to Marine Highway Corridors. In addition, public benefits can include, but are not limited to, reduced emissions, including greenhouse gases, reduced energy consumption, landside infrastructure maintenance savings, improved safety, and added system resiliency. Additional consideration will be given to Marine Highway Projects that represent the most cost-effective option among other modal improvements and projects that reduce border delays.

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

(c) *Designation of Marine Highway Corridors.* The Department will continue to accept Marine Highway Corridor recommendations from prospective Corridor sponsors. Corridor sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including State Departments of Transportation), port authorities and Tribal governments. In addition to "Corridors," prospective sponsors may recommend Marine Highway "Connectors" and "Crossings" for designation by the Secretary (*see* definitions). The Secretary will make Marine Highway Corridor designations. In certain cases the Secretary of Transportation may designate a Marine Highway Corridor, Connector or Crossing without receipt of a recommendation. The Department will publish all Marine Highway Corridors that receive designation by the Secretary on the Maritime Administration's Web site. Interested parties are encouraged to visit *http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhi_home.htm* for the current list of Designated Corridors. When responding to specific solicitations for Marine Highway Corridors, Connectors and Crossings by the Secretary of Transportation, the sponsors should provide the following information in the recommendation:

(1) *Physical Description of Proposed Marine Highway Corridor.* Describe the proposed Marine Highway Corridor (including Connector or Crossing), 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 land transportation route that the Marine Highway would benefit. Include a description of the route, its primary users, the nature, locations and occurrence of travel delays, urban areas affected, and other geographic or jurisdictional issues that impact its overall operation and performance.

(3) *Involved Parties.* Provide the organizational structure of the 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 (including Tribal) that have been engaged. Include the extent to which they support the corridor designation. Provide any affiliations with environmental groups or civic associations.

(4) *Passengers and Freight.* Identify the number of likely passengers and/or quantity of freight that are candidates for shifting to water transportation on 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 the extent to which the proposed Corridor could relieve landside congestion in measurable terms. Include any known offsetting land transportation infrastructure savings (either construction or maintenance) that would result from the project.

(6) *Public benefits.* Provide, if known, the savings over status quo in emissions, including greenhouse gases, energy consumption, landside infrastructure maintenance costs, safety and system resiliency. Specify if the Marine Highway Corridor represents the most cost-effective option among other modal improvements. Include consideration of the implications future growth may have on the proposal.

(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) *Scope of Department Support.* Marine Highway Corridors, Connectors and Crossings that receive designation will be posted on a Web site maintained by the Maritime Administration. 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, local and Tribal government transportation planners, private sector entities or other decision-makers.

(2) Coordinate with ports, State Departments of Transportation, Metropolitan Planning Organizations, localities, other public agencies (including Tribal governments) 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 Federal, regional, State, local, and Tribal 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 regional, State, local and Tribal governments to include designated Corridors in transportation planning.

(6) Bring specific impediments to the attention of the advisory board chartered to address such barriers.

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

(8) Utilize current or future Federal funding mechanisms, as appropriate, to support the Corridor.

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

§ 393.4 Marine Highway Projects.

(a) *Summary.* The purpose of this section is to designate projects that, if successfully implemented, expanded, or otherwise enhanced, would reduce external costs and provide the greatest benefit to the public. In addition to congestion relief, public benefits can include, but are not limited to, reduced emissions, including greenhouse gases, reduced energy consumption, landside infrastructure maintenance savings, and improved safety. The Department will give additional consideration to Marine Highway Projects that represent the most cost-effective option among other modal improvements or reduce border crossing delays. Some Marine Highway Projects can also provide public benefit by offering routes that are more resilient to natural or human incidents that interrupt surface transportation, or provide additional, redundant surface transportation options. 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 as described in this section.

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

(1) Reduce landside congestion-related impacts.

(2) Identify proposed water transportation services that represent the greatest public benefit as measured in reduced emissions, including greenhouse gases, reduced energy consumption, landside infrastructure maintenance savings and improved safety.

(3) Identify potential savings with water transportation projects that represent the most cost-effective option among other modal improvements or reduce border crossing delays.

(4) Improve surface transportation system resiliency and provide additional options.

(5) Focus resources on those projects that offer the greatest likelihood of successful operation.

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

(7) Provide specific examples, with performance measures and quantifiable outcomes, of successful Marine Highway Projects for demonstration of the benefits of water transportation.

(c) *Designation of Marine Highway Projects.* The Department 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), port authorities and Tribal governments. 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, railroads, port authorities, State, regional, local and Tribal government transportation planners, environmental interests or any combination of entities working in collaboration under a single application. Candidate Projects can start a new operation or be an existing Marine Highway operation 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.* The Department will evaluate and select Projects based on an analysis and technical review of the information provided by the applicant. The Department will also evaluate projects based on the results of an environmental analysis. Projects that support a designated Marine Highway Corridor (or Connector or Crossing), receive a favorable technical review, and meet other criteria as defined in 46 CFR 393.4(e), may be nominated by the Maritime Administrator for selection by the Secretary. Upon designation as a Marine Highway Project, the Department will coordinate with the Project sponsor to identify the most appropriate Departmental actions to support the project. Department support could include any of the following, as appropriate and within agency resources:

(1) Promote the service with appropriate governmental, regional, State, local or Tribal government 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 service. Efforts can be aimed at identifying resources, obtaining access to land or terminals, developing landside facilities and infrastructure, and working with Federal, regional, State, local or Tribal governmental entities to remove barriers to success.

(3) 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.

(4) In cases where transportation infrastructure is needed, Project sponsors may request to be included 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.

(5) Assist with developing individual performance measures for Marine Highway Projects.

(6) Work with Federal entities and regional, State, local and Tribal governments to include designated Projects in transportation planning.

(7) Bring specific impediments to the attention of the advisory board chartered to address these barriers.

(8) Conduct research on issues specific to Marine Highway Projects.

(9) Utilize current or future Federal funding mechanisms, as appropriate, to support the Projects.

(10) Maintain liaison with sponsors and 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.* This section specifies the criteria that the Department will use to evaluate Marine Highway Project applications. Applicants should provide the following:

(1) *Applications for Proposed Projects.* When responding to specific solicitations for Marine Highway Projects by the Department, describe the overall operation of the proposed project, including 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. Applicants should also include the following information in their project applications:

(i) *Marine Highway Corridor(s).* Identify which, if known, designated Marine Highway Corridors, Connectors or Crossings will be utilized.

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

(iii) *Partnerships.*

(A) *Private Sector participation.* Identify private sector partners and describe their levels of commitment. Private sector partners can include terminals, vessel operators, shipyards, shippers, trucking companies, railroads, third party logistics providers, shipping lines, labor, workforce and other entities deemed appropriate by the Secretary.

(B) *Public Sector partners:* Identify State Departments of Transportation, Metropolitan Planning Organizations, municipalities and other governmental entities (including Tribal) that have been engaged and the extent to which they support the service. Include any affiliations with environmental groups or civic associations.

(C) *Documentation.* Provide documents affirming commitment or support from entities involved in the project.

(iv) *External cost savings and public benefit.*

(A) *Potential relief to surface transportation travel delays.* Describe the extent to which the proposed project will relieve landside congestion in measurable terms now and in the future, such as reductions in vehicle miles traveled. Include the landside routes that stand to benefit from the water transportation operation.

(B) *Emissions benefits.* Address the savings, in quantifiable terms, now and in the future over the current practice in emissions, including greenhouse gas emissions, criteria air pollutants or other environmental benefits the project offers.

(C) *Energy savings.* Provide an analysis of potential reductions in energy consumption, in quantifiable terms, now and in the future over the current practice.

(D) *Landside transportation infrastructure maintenance savings.* To the extent the data is available, indicate, in dollars per year, the projected savings of public funds that would result from a proposed project in road or railroad maintenance or repair, including pavement, bridges, tunnels or related transportation infrastructure. Include the impacts of accelerated infrastructure deterioration caused by vehicles currently using the route, especially in cases of oversize or overweight vehicles.

(E) *Safety improvements.* Describe, in measurable terms, the projected safety improvements that would result from the proposed operation.

(F) *System resiliency and redundancy.* To the extent data is available describe, if applicable, how a proposed Marine Highway Project offers a resilient route or service that can benefit the public. Where land transportation routes serving a locale or region are limited, describe how a proposed project offers an alternative and the benefit this could offer when other routes are interrupted as a result of natural or man-made incidents.

(v) *Capacity Alternatives.* In cases where a Marine Highway Project is proposed as an alternative to constructing new land transportation capacity, indicate, in quantifiable terms, whether the proposed project represents the most cost-beneficial option among other modal improvements. Include in the comparison an analysis of the full range of benefits expected from the project. Include the projected savings in life-cycle costs of publicly maintained infrastructure.

(vi) *Business Planning.* Indicate the degree to which the proposed project is associated with a service that is self-supporting:

(A) *Financial plan.* Provide the project's financial plan and provide projected revenues and expenses. Include labor and operating costs, drayage, fixed and recurring infrastructure and maintenance costs, vessel or equipment acquisition or construction costs, *etc.* Include any anticipated changes in local or regional freight or passenger transportation, policy or regulations, ports, industry, corridors, or other developments affecting the project.

(B) *Demand for services.* 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. In the case of services involving passengers, provide indicators of demand for the service, anticipated volumes and other factors that indicate likely utilization of the service. Include a marketing strategy, if one is in place.

(C) *Analysis.* Provide, (or reference, if publicly available) market or transportation system research, data, and analysis used to develop or support the business model.

(vii) *Proposed Project Timeline.* Include a proposed project timeline 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).

(viii) *Support.* Describe any known or anticipated obstacles to either implementation or long-term success of the project. Include any strategies, either in place or proposed, to mitigate impediments. In the event that public sector financial support is being sought, describe the amount, form and duration of public investment required.

(ix) *Environmental Considerations.* Applicants must provide all information on hand that would assist the Department in conducting environmental analysis of the proposed project under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*)

(2) *Cost and Benefits.* The Department believes that benefit-cost analysis (BCA), including the monetization and discounting of costs and benefits to a common unit of measurement in present-day dollars, is important. The systematic process of comparing

expected benefits and costs helps decision-makers organize information about, and evaluate trade-offs between alternative transportation investments. However, we also recognize that development of a thorough BCA can be prohibitively costly to applicants, especially in cases where Federal funding is not currently available. Applicants should provide a BCA, if one is available. At a minimum, applicants should provide estimates of the project's expected benefits in external cost savings and public benefit and costs of capacity alternatives [sections 393.4(e)(1)(iv) and 393.4(e)(1)(v)].

(3) *Standards and Measures.* The Department will post, on the Maritime Administration's Web site, (*http://www.marad.dot.gov*) proposed standards (*i.e.:* the definition and use of ton-miles, measures of landside congestion, *etc.*) and measures that, lacking more specific or technically supported applicant-provided data, will be used by the Department to evaluate applications. Some examples of measures are the use of a standard cargo tonnage per container, fuel consumption rates, vehicle emissions and safety data for various transportation options, and baseline maintenance, repair and construction costs for surface transportation infrastructure. While we recognize that these standards and measures may not be ideal, the intent is to establish a minimal baseline by which to evaluate external costs and public benefits of transportation options. In the event applicants provide more specific and supported measures, they will be used in evaluating the potential benefits and costs of a project.

(4) *Protection of Confidential Business Information.* All information submitted as part of or in support of an application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If your application includes information that you consider to be trade secret or confidential commercial or financial information, please do the following:

(i) Note on the front cover that the submission "Contains Confidential Business Information (CBI);"

(ii) Mark each affected page "CBI;" and

(iii) Clearly highlight or otherwise denote the CBI portions. The Department protects such information from disclosure to the extent allowed under applicable law. In the event the Department receives a Freedom of Information Act (FOIA) request for the information, the Department will follow the procedures described in its FOIA regulations at 49 CFR § 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

(5) *Contents of Application.* When responding to specific solicitations for Marine Highway Projects by the Department, applicants should include all of the information requested by Section 393.4(e)(1) and (2) above organized in a manner consistent with the elements set forth in that section. The Department reserves the right to ask any applicant to supplement the data in its application, but expects applications to be complete upon submission. The narrative portion of an application should not exceed 20 pages in length. The narrative should address all relevant information contained in paragraphs (e)(1)(i) through (ix) of § 393.4. Documentation supporting the assertions made in the narrative portion may also be provided in the form of appendices, but limited to relevant information. Applications may be submitted electronically via the **Federal Register** (*http://www.regulations.gov*). Applications submitted in writing must include the original and three copies and must be on 8.5″ x 11″ single spaced paper, excluding maps, Geographic Information Systems (GIS) representations, *etc.* In the event that the sponsor of a Marine Highway Project that has already been designated by the Secretary seeks a modification to the designation because of a change in project scope, an expansion of the project, or other significant change to the project, the project sponsor should request the change in writing to the Secretary via the Administrator of the Maritime Administration. The request should contain any changed or new information that is relevant to the project.

(6) *Evaluation Process.* Upon receipt by the Maritime Administrator, the application will be evaluated using the criteria outlined above during a technical review and an environmental analysis. The review will assess factors such as project scope, impact, public benefit, environmental effect, 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* section 393.3 Marine Highway Corridors). Additional factors may be considered during the evaluation process. Upon completion of the technical review, applications will be forwarded to an inter-agency review team as described below. The Department will establish an inter-agency team to review each application received during the solicitation period (solicitation periods will be established via a future **Federal Register** Notice). The evaluation team will be led by the Office of the Secretary and will include members of the Maritime Administration, other Department of Transportation Operating Administrations, and as appropriate, representation from other Federal agencies and other representatives, as needed. The inter-agency team will evaluate applications using criteria that establishes the degree to which a proposed project can; reduce external cost and provide public benefit; offer a lower-cost alternative to increasing capacity in the Corridor, and; demonstrate the likelihood the service associated with the project will become self-supporting in a specified and reasonable timeframe. The Department will assign ratings of "highly recommended," "recommended," or "not recommended" for each application based on the criteria set forth in section 393.4(e)(1) and (2) of this rule. Specific numerical scores will not be assigned. Within the overall criteria of External Cost Savings and Public Benefit, elements paragraphs (e)(1)(iv)(A) through (e)(1)(iv)(D) of this section will receive greater weight than will paragraphs (e)(1)(iv)(E) and (e)(1)(iv)(F) of this section. For the Business Planning elements, only paragraphs (e)(1)(vi)(A) and (e)(1)(vi)(B) of this section will be weighted; paragraph (e)(1)(vi)(C) of this section will be reviewed to assess the degree to which future projections such as operating costs and freight/passenger demand are accurate and reliable. Projects that have been deemed "highly recommended" and "recommended" will be placed on a preliminary list of projects for designation. The Secretary will make final designations in a manner that provides a balance between geographic regions and business models (*i.e.* among freight and passenger, expansion and new service, and existing vessel/terminal and new construction) to the degree this can be achieved. Prospective project sponsors will be notified as to the status of their application in writing once a determination has been made.

(7) *Performance Monitoring.* (i) Once designated projects enter the operational phase (either start of a new service, or expansion of existing service), the Department will evaluate them regularly to determine if the project's objectives are being achieved.

(ii) Overall project performance will be in one of three categories—exceeds, meets, or does not meet original projections in each of the three areas defined below:

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? Other public benefits, including 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).

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 (*i.e.* 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).

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 and passenger 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, local and Tribal 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, Regional and Tribal Transportation Planning.* The Department will coordinate with Federal, State, local and Tribal governments and Metropolitan Planning Organizations to develop strategies to encourage the use of America's Marine Highways for transportation of passengers and cargo. The Department will:

(1) Work with these entities 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) Facilitate groups of States and multi-State transportation entities to determine how Marine Highway transportation can address traffic delays, 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.

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

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

(e) *Impediments and Solutions.* The Department will either establish a board, or modify an existing body, in accordance with the Federal Advisory Committee Act (FACA), whose role is to identify impediments that hinder effective use of the Marine Highways and recommend solutions. The Board will meet regularly and report its findings and recommended solutions to the Maritime Administrator. Board membership will include, among others, representation by Federal Departments and Agencies, State Departments of Transportation, Metropolitan Planning Organizations and other local public entities including Tribal governments and private sector stakeholders. The Department will take actions, as appropriate, to address impediments to the Marine Highways.

§ 393.6. Research on Marine Highway Transportation.

(a) *Summary.* The Department 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 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 Highways 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.

Dated: April 1, 2010.

By Order of the Administrator.

Julie P. Agarwal,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–7899 Filed 4–7–10; 11:15 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2009–0010; MO 92210–0–0009–B4]

RIN 1018–AV87

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Oregon Chub (Oregonichthys crameri); Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), published a final rule to designate critical habitat for the Oregon chub (*Oregonichthys crameri*) under the Endangered Species Act of 1973, as amended (Act), on March 10, 2010. We are publishing several corrections to that final rule in this document.

DATES: This rule is effective April 9, 2010.

ADDRESSES: Our final rule and associated documentation are available at *http://regulations.gov* at Docket No. FWS–R1–ES–2009–0010 and, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Ave., Portland, OR 97266; telephone 503–231–6179; facsimile 503–231–6195.