

order, FAA Order JO 7400.11J, dated July 31, 2024, and effective September 15, 2024. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11J lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Faith Municipal Airport, Faith, SD.

This action is supports the development of new public instrument procedures at this airport and to support IFR operations.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL SD E5 Faith, SD [Establish]

Faith Municipal Airport, SD
(Lat 45°02′07″ N, long 102°01′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Faith Municipal Airport.

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Issued in Fort Worth, Texas, on November 7, 2024.

Steven T. Phillips,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 500 and 515

[FHWA Docket No. FHWA–2024–0048]

RIN 2125–AG00

Asset Management Plans; Management and Monitoring Systems

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

ACTION: Notice of Proposed Rulemaking (NPRM); request for comments.

SUMMARY: The Federal Highway Administration (FHWA) is proposing to amend its regulations governing risk-based Asset Management Plans (AMP). State departments of transportation (State DOT) are required to develop and implement a risk-based AMP for the National Highway System (NHS) to improve or preserve the condition of the assets and the performance of the NHS. Through this notice, FHWA is proposing to amend its AMP regulations

to add and revise definitions in the rule and update the processes State DOTs are required to use in developing an AMP, the required content of the AMP, procedures for State DOTs to submit AMPs to FHWA to ensure that State DOTs are implementing AMPs consistent with law, and procedures for State DOTs to recertify their processes for developing the AMP. The FHWA is proposing these revisions to implement changes in law, advance current policies, and increase the flexibility for State DOTs to comply with AMP regulations. The FHWA is also making minor technical corrections and changes to the rule to improve readability. Finally, FHWA proposes to remove obsolete regulations governing transportation management and monitoring systems.

DATES: Comments must be received on or before January 13, 2025.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE, Washington, DC 20590, or submit electronically at <http://www.regulations.gov>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. 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>.

FOR FURTHER INFORMATION CONTACT: Ms. Tashia J. Clemons, Office of Infrastructure, 202–493–0551, tashia.clemons@dot.gov; or Mariya Tikhonova, Office of the Chief Counsel, 202–366–1356, mariya.tikhonova@dot.gov, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or access all comments received by the DOT online through: <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded from the **Federal Register's** home page at: <http://www.federalregister.gov>.

Background and Legal Authority

Asset Management Plans

The term “asset management” means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost. The Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112–141) amended section 119(e) of Title 23, United States Code (U.S.C.), to establish a requirement for States to develop and implement risk-based AMP to improve or preserve the condition of NHS assets and the performance of the system. 23 U.S.C. 119(e)(1). Section 119(e)(4) of Title 23, U.S.C., establishes the minimum requirements for the contents of a State’s AMP and clearly delegates to FHWA the authority to determine the appropriate form of the AMP.¹ On October 24, 2016, FHWA published a final rule (81 FR 73196) that implemented requirements established by MAP-21 and codified at 23 U.S.C. 119(e) for States to develop and implement AMPs to improve or preserve the condition of NHS assets and the performance of the system in accordance with 23 U.S.C. 119(e)(1). The 2016 final asset management rule implements AMP requirements, including the processes State DOTs must use to develop their plans and meet Federal requirements, and is codified at title 23, Code of Federal Regulations (CFR), part 515.

The provisions of 23 U.S.C. 119(e) and 23 CFR part 515 require FHWA to certify, and periodically recertify, the processes a State DOT uses to develop an AMP and to evaluate a State DOT’s development and implementation of its AMP. The first step is for FHWA to

certify/recertify a State DOT’s AMP development process. *See* 23 U.S.C. 119(e)(6); 23 CFR 515.13(a). The FHWA must certify at least every 4 years, and whenever the State DOT amends its AMP development processes, that the State DOT’s processes for developing AMP meet applicable requirements. *See* 23 U.S.C. 119(e)(6)(B); 23 CFR 515.13(c). The second step is for FHWA to conduct an annual consistency determination, which evaluates whether the State DOT has developed and implemented an AMP that is consistent with the requirements of 23 U.S.C. 119. *See* 23 U.S.C. 119(e)(5); 23 CFR 515.13(b). If a State DOT has not developed and implemented an AMP consistent with the requirements in 23 U.S.C. 119(e) and 23 CFR part 515, the State receives a reduced Federal share for National Highway Performance Program (NHPP) projects and activities carried out during the fiscal year in which the State DOT did not meet the AMP requirements. *See* 23 U.S.C. 119(e)(5)(A); 23 CFR 515.15(a).

In 2018, State DOTs submitted their first AMP for review and approval according to the requirements of the 2016 final rule. Since then, FHWA has developed training, hosted regional workshops and Webinars, developed guidance documents, and produced a number of resource documents to prepare State DOTs for recertification. State DOTs have also undergone, on an annual basis, a consistency evaluation to ensure certified AMPs are developed and implemented consistent with 23 U.S.C. 119 and 23 CFR part 515.

Events following the promulgation of the asset management rule in 2016 require updating 23 CFR part 515. On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, also known as the “Bipartisan Infrastructure Law”) (BIL) into law. The BIL amended the minimum requirements for an AMP, by requiring that the AMP’s life-cycle cost and risk management analyses take into consideration extreme weather and resilience.² In addition, Executive Order (E.O.) 14008 of January 27, 2021, Tackling the Climate Crisis at Home and Abroad (86 FR 7619), directs Federal Agencies to take action addressing the crisis of climate change by, among other activities, increasing resilience to the impacts of climate change, including through the delivery of sustainable infrastructure. *See* E.O. 14008, § 201. The FHWA has identified the AMP rule as an opportunity to advance current policies to address impacts of the

present climate crisis through planning for a transportation system that is more resilient to the effects of sea level rise, extreme weather events, flooding, wildfires, or other natural disasters.³

The development and updating of the AMP is also an opportunity to advance the policies of E.O. 13985 of January 20, 2021, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009), which directed Federal Agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for underserved communities and to use this information to develop policies and programs that deliver resources and benefits equitably to all. *See* E.O. 13985, § 1. Consistent with the goals of E.O. 13985, State DOTs are encouraged to consider how the processes for developing an AMP and the content of the AMP can promote equity for users of assets included in the AMP and the communities impacted by the management of those assets, particularly with respect to the AMP’s investment strategies. The FHWA requests comments on the consideration of equity in the AMP, including information from State DOTs that are already considering equity in the development of their AMPs and in particular, their AMP’s investment strategies.

Management and Monitoring Systems

In 1991, Congress passed the Intermodal Surface Transportation Efficiency Act (Pub. L. 102–240), which added section 303 to 23 U.S.C., requiring the Secretary of Transportation to issue regulations for State development, establishment, and implementation of systems to manage highway pavements and bridges, highway safety, traffic congestion, public transportation facilities and equipment, and intermodal transportation facilities and systems. Section 303 also required the Secretary to issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment. The FHWA and the Federal Transit Administration (FTA) subsequently promulgated a final rule to implement 23 U.S.C. 303 (61 FR 67166, Dec. 19, 1996) and codified the regulations at 23 CFR part 500. Section 303 was subsequently repealed by MAP-21, § 1519(b)(1)(A), and FHWA and FTA no longer use the regulations

¹ Under 49 CFR 1.85(a)(1), the FHWA Administrator is delegated the authority of the Secretary of Transportation to administer Chapter 1 of Title 23, U.S.C., which includes section 119.

² *See* BIL, § 11105(3) (codified at 23 U.S.C. 119(e)(4)(D)).

³ *See* 23 U.S.C. 119(b)(4).

governing the management and monitoring systems at 23 CFR part 500.

Purpose of the Regulatory Action

Through this NPRM, FHWA is proposing to implement the amendments to 23 U.S.C. 119(e) in BIL to require that an AMP's risk management and life-cycle planning analysis take into consideration extreme weather and resilience. The incorporation of resilience considerations into the AMP is also consistent with the policy of E.O. 14008. In addition, FHWA is proposing several updates to the AMP rule, which has not been revised since its initial promulgation in 2016. These updates will remove outdated references, increase flexibility for State DOTs, and clarify and streamline the process for State DOTs to submit, and for FHWA to review, AMPs for the annual consistency determination and AMP processes for periodic recertification. Finally, as part of its ongoing efforts to ensure its regulations are up to date and do not contain unnecessary information, FHWA is proposing to remove outdated regulations in 23 CFR part 500. The regulations in 23 CFR part 500 would be removed and part 500 would be reserved for future use.

Section-by-Section Discussion

23 CFR Part 500

As discussed above, FHWA is proposing to remove and reserve 23 CFR part 500, management and monitoring systems, because the underlying statutory authority for promulgating part 500 has been repealed and neither FHWA nor FTA rely on part 500 for regulating management systems under their respective jurisdictions.

23 CFR Part 515

Section 515.1 Purpose

In § 515.1, FHWA is proposing to change "State transportation department" to "State department of transportation." This change is nonsubstantive and is being proposed so that FHWA uses consistent terminology throughout title 23, CFR.

Section 515.3 Applicability

The FHWA proposes to remove the language "and effective date" from the section heading and related language from the text of § 515.3. This language is no longer needed because all State DOTs are fully in compliance with the statutory and regulatory requirements to develop and implement their AMPs.

Section 515.5 Definitions

The FHWA proposes to add definitions for five terms specific to the process for developing AMPs and revise existing definitions to implement statutory requirements and policy priorities.

The FHWA proposes to add a definition for *climate change*. This definition is taken from FHWA Order 5520, Transportation System Preparedness and Resilience to Climate Change and Extreme Weather Events (December 15, 2014).⁴ Climate Change would mean "any significant change in the measures of climate lasting for an extended period of time. Climate change includes major variations in temperature, precipitation, or wind patterns, among other environmental conditions, that occur over several decades or longer. Climate change may manifest as a rise in sea level, as well as increase the frequency and magnitude of extreme weather events now and in the future." Given the connection between climate change and the potential for the increased frequency of extreme weather events, and in light of the new requirement in BIL that an AMP's lifecycle cost and risk management analyses must take into consideration extreme weather and resilience, it is appropriate to include a definition for climate change.

The FHWA proposes to add a definition for *extreme weather events*, which would be defined as "events that can include significant anomalies in temperature, precipitation, and winds and can manifest as heavy precipitation and flooding, heatwaves, drought, wildfires, and windstorms (including tornadoes and tropical storms). Consequences of extreme weather events can include safety concerns, damage, destruction, and/or economic loss. Climate change can also cause or influence extreme weather events." This definition is also found in FHWA Order 5520, and it highlights the connection between climate change and changing temperature, precipitation, and winds, and intensification of precipitation, flooding, heatwaves, drought, wildfires, and windstorms. Adding a definition for extreme weather events to § 515.5 is necessary to implement the requirement in BIL that an AMP's lifecycle cost and risk management analyses take into consideration extreme weather and resilience.

The FHWA proposes to add a definition for *implementation period* to assist State DOTs in gathering information to demonstrate

implementation of the AMP for a 12-month period as required by 23 U.S.C. 119(e)(5) and 23 CFR 515.13(b). Implementation period would mean the 12-month period, beginning on June 1 and ending on May 31 of the following year, covered by an AMP for purposes of plan implementation and the annual consistency determination.

Because FHWA is proposing to include references to the long-range statewide transportation plan in part 515 (see the section-by-section discussion for §§ 515.9 and 515.19 below), FHWA proposes to add a definition for *long-range statewide transportation plan*, which would have the same meaning as the term is defined in 23 CFR 450.104.

The FHWA proposes to define the term *resilience* to help State DOTs incorporate resiliency as part of their AMP's system-level evaluation and to meet the statutory requirement for State DOTs to consider resilience as part of lifecycle planning and risk management analysis. The definition proposed here has the same meaning as defined in 23 U.S.C. 101(a)(24) except that under this part, resiliency is evaluated on the system level rather than with respect to a project.

In addition to the definitions proposed to be added to 23 CFR 515.5, FHWA is proposing changes to existing definitions to implement BIL, advance current priorities, and improve the rule.

The FHWA proposes to amend the definition of *Asset class* so that the example asset class of "Intelligent Transportation (IT)" would read "Intelligent Transportation Systems (ITS)." This is a technical change that is not intended to have any substantive impact.

The FHWA proposes to amend the definition for *life-cycle planning* to mean "a process to analyze strategies for managing an asset class or asset sub-group over their whole life with demonstrated consideration for extreme weather events and resilience, minimizing cost while preserving or improving their condition, and extending the life of the assets. It includes analyzing life-cycle cost, condition, and other life-cycle benefits of alternative strategies that vary by work type and timing." The FHWA proposed change reflects the requirements in 23 U.S.C 119(e)(4)(D) for State DOTs to consider extreme weather and resilience when analyzing estimated cost for the whole life of an asset class or asset sub-group.

The FHWA proposes to edit the definition of *risk management* to reflect the requirement 23 U.S.C. 119(e)(4)(D) for State DOTs to consider extreme

⁴ <https://www.fhwa.dot.gov/legregs/directives/orders/5520.cfm>.

weather and resilience for risk management analysis. Currently, risk management means the identification, analysis, evaluation, and management of risks to assets and system performance. The FHWA proposes to revise the definition to mean “the processes and framework for managing potential risks, such as adverse impacts associated with extreme weather events and other risks to system resilience. Risk management includes the identification, analysis, evaluation, and management of risks to assets and system performance.”

Finally, FHWA proposes to edit the definition of *work types* to provide additional flexibility for States to improve physical assets. Work types would be defined as “the categories of work utilized by a State DOT to strategically and systematically operate, maintain, and improve physical assets. Work type categories may include initial construction, maintenance, preservation, rehabilitation, and reconstruction.” This proposed change would make the specified work types included in the original definition examples for consideration rather than an exclusive list. It would allow State DOTs to categorize the work in their AMPs in a way that is appropriate for their particular circumstances, so long as the categories allow the State DOTs to describe how they will use the categories to strategically and systematically operate, maintain, and improve the physical assets that are included in the AMP.

Section 515.7 Process for Developing the Asset Management Plan

Section 515.7 describes the processes State DOTs are required to use in developing their AMPs and that are subject to certification by FHWA pursuant to 23 U.S.C. 119(e)(6). State DOTs use their certified processes to produce information it needs to develop the contents of the AMP required under 23 U.S.C. 119(e)(4) and part 515. The FHWA is proposing changes to § 515.7 that implement updates to 23 U.S.C. 119 made by BIL, advance current priorities, and clarify rule language.

The FHWA is proposing several changes to improve the clarity and readability of § 515.7. First, FHWA proposes to remove the first sentence of § 515.7's introductory text, which describes in general terms the overall requirement for State DOTs to develop risk-based AMPs. This language is unnecessary because the precise requirements for the processes State DOTs must use to develop their AMPs is enumerated in the paragraphs of § 515.7. Second, FHWA proposes to revise language in § 515.7 to reflect that

State DOTs have already have processes for developing the AMP and have already established targets for the condition of NHS pavements and bridges. In particular, this NPRM would remove language in the introductory text of paragraphs (a) through (e) requiring State DOTs to “establish” processes for developing the AMP and language in paragraph (a)(1) relating to establishing targets “once promulgated.” Third, FHWA is reorganizing the contents of paragraphs (a) through (e) and making changes to rule language to improve the clarity of the rule. Except as specified herein, FHWA does not intend for these changes to have substantive impact on the requirements for the processes that State DOTs use to develop their AMPs.

The FHWA is also proposing to amend the requirements for processes to develop the AMP to implement the requirement from BIL that the AMP's life-cycle cost and risk management analyses must include consideration of extreme weather and resilience. Thus, FHWA is proposing the following changes:

- Including “cost impacts related to the presence or absence of resilience” among the factors in paragraph (b) introductory text that a State DOT should include in developing the process for conducting life-cycle planning;
- Revising paragraph (b)(2) so that deterioration models used for each asset class or asset sub-group of NHS pavements and bridges demonstrate consideration of resilience and extreme weather events; and
- In paragraph (c), including resilience as a risk that a State DOT's process for developing a risk management analysis must be able to identify and, in paragraph (c)(3), requiring a State DOT to treat risks to resilience as top priority risks if such risks are identified.

The FHWA is also proposing several changes to improve the operation of § 515.7. In paragraph (a)(3), FHWA is proposing that a State DOT's process for conducting a performance gap analysis must give consideration to strategies for closing or addressing gaps that are identified in the State DOT's performance-based plans, such as the State Freight Plan or Highway Strategic Safety Plan. Performance-based plans can be important sources of information for identifying gaps in current condition of NHS pavements and bridges and the State DOT's targets.

In the introductory text of paragraph (c), which currently requires a State DOT to establish a process for developing a risk management plan,

FHWA proposes to use the word “analysis” instead of “plan” to more closely align with the text of 23 U.S.C. 119(e)(4)(D). In paragraph (c)(1), FHWA proposes to provide additional information in the discussion of example risk categories, but this is not intended to create any additional requirements.

Paragraph (e) requires a State DOT shall establish a process for developing investment strategies for an AMP that meet the requirements in § 515.9(f). Currently, this process must result in a description of how the investment strategies are influenced, at a minimum, by the following: (1) Performance gap analysis required under § 515.7(a); (2) Life-cycle planning for asset classes or asset sub-groups resulting from the process required under § 515.7(b); (3) Risk management analysis resulting from the process required under § 515.7(c) of this section; and (4) Anticipated available funding and estimated cost of expected future work types associated with various candidate strategies based on the financial plan required by § 515.7(d).

The FHWA is proposing to revise the structure and content of § 515.7(e). The FHWA proposes to make changes to paragraph (e) to show how investment strategies selected by State DOTs are influenced by strategies identified as a result of the processes required to develop the performance gap, lifecycle planning, and risk management analyses described in paragraphs (a) through (c)). Therefore, FHWA proposes to revise the existing requirement that the process produce a description of how the investment strategies are influenced by the processes for generating the AMP's performance gap, lifecycle planning, and risk management analyses to require that the process result in a description of how the investment strategies are influenced by the *strategies* that are identified as a result of those analyses (proposed paragraphs (e)(1)–(3)). The FHWA is also proposing to require that the process for developing investment strategies include a description of how the selected investment strategies are influenced by consideration for how the selected investment strategies would sustain and maintain a state of good repair over the life-cycle of the assets, leading to an improvement in the performance of the NHS and improved travel times (proposed paragraph (e)(4)); and consideration for how the selected investment strategies would sustain and maintain a state of good repair over the life-cycle of the assets, resulting in deferred replacement of assets at minimum practicable cost (proposed

paragraph (e)(5). A deferred replacement of assets may result in lower carbon emissions that would otherwise result from more frequent replacement. Finally, FHWA is proposing to require in paragraph (e)(6) that the process for developing the AMP's investment strategies identify anticipated available funding and the estimated cost of expected future work types by asset class identified as a result of the process for developing the AMP's financial plan required under paragraph (d) and associated with selected strategies identified as a result of the processes to develop the AMP's performance gap, lifecycle planning, and risk management analyses required under paragraphs (a)–(c). The FHWA is proposing to use the term “selected strategies” to clarify that analysis conducted for investment strategies would only be necessary for those strategies that are going to be implemented.

Section 515.9 Asset Management Plan Requirements

Section 515.9 sets forth minimum content requirements that apply to a State DOT AMP. In paragraph (a), FHWA is proposing to add a reference to 23 U.S.C. 119 to clarify that the AMP must comply with the statutory requirements of 23 U.S.C. 119(e) as well as the regulations at 23 CFR part 515. The FHWA is also proposing minor technical changes to § 515.9, including in paragraphs (d)(2) and (e) to update references to other regulations in 23 CFR that had not been promulgated at the time of the 2016 final rule.

The FHWA proposes several revisions to the required contents of an AMP set forth in paragraph (d). In paragraph (d)(4), FHWA is proposing to clarify that the AMP must include performance gap analysis results, including strategies to close identified gaps. These strategies would be produced as a result of the process required by proposed § 515.7(a)(3)–(4), although FHWA notes that existing § 515.7(a)(3) requires the performance gap analysis process to produce strategies to close or address gaps identified by this process.

In paragraph (d)(5), FHWA proposes that the requirement for the life-cycle planning element be revised to require life-cycle planning analysis results that demonstrate consideration of extreme weather events and resilience and include strategies for managing each asset class or asset subgroup. The addition of the requirement that the life-cycle planning analysis demonstrate consideration of extreme weather event and resilience implements the change to 23 U.S.C. 119(e)(4)(D) made by BIL. As with the proposed change to paragraph

(d)(4), the proposed requirement to include strategies for managing each asset class or subgroup is intended to emphasize that the strategies required to be developed as a result of the life-cycle planning process set forth in § 515.7(b)(4) are required to be included in the AMP itself.

In paragraph (d)(6), FHWA proposes that the requirement for the risk management analysis element be revised to require risk management analysis results that demonstrate consideration of extreme weather events and resilience and include strategies to eliminate or reduce top priority risks. As with the proposed change to paragraph (d)(5), the proposed changes in paragraph (d)(6) implement new language in 23 U.S.C. 119(e)(4)(D) and emphasize that the strategies required to be developed as a result of the risk management analysis process set forth in § 515.7(c)(4) are required to be included in the AMP itself.

In paragraph (d)(8), FHWA proposes to require that the AMP's investment strategies element include sufficient detail to demonstrate that the State DOT's selected investment strategies align with the various levels of funding to achieve targets for asset condition and system performance effectiveness at a minimum practicable cost while managing risks. This is consistent with the proposed revisions to the process for developing the AMP's investment strategies in § 515.7(e)(2) that would require a State DOT to describe how its selected investment strategies are influenced by the AMP's performance gap, life-cycle planning, and risk management analyses.

In paragraph (f), FHWA proposes to add a new paragraph (f)(5) that would require an AMP to discuss how its investment strategies would collectively make or support progress toward addressing risks from extreme weather events and risks to system resilience described in § 515.7(c)(1). This change would support the BIL's amendment to 23 U.S.C. 119(e)(4)(D) requiring lifecycle cost and risk management analyses to consider extreme weather and resilience, and it supports the policies of E.O. 14008, which directs Federal Agencies to take action addressing the crisis of climate change by, among other activities, increasing resilience to the impacts of climate change, including through the delivery of sustainable infrastructure.

In paragraph (h), FHWA proposes to require a State DOT to integrate its AMP into the transportation planning processes that lead to the long-range statewide transportation plan described in 23 CFR 450.216, along with the

Statewide Transportation Improvement Program (STIP), which is already included in paragraph (h). This aligns with two requirements in 23 CFR 450.206(c): the requirement in § 450.206(c)(4) that the State “shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this section, in other State transportation plans and transportation processes” including the AMP; and the requirement in § 450.206(c)(5) that the State shall “consider the performance measures and targets established under this paragraph when developing policies, programs, and investment priorities reflected in the long-range statewide transportation plan” along with the STIP.

In paragraph (l), FHWA proposes to amend the introductory text to clarify that if a State DOT decides to include assets in addition to NHS pavement and bridge assets in its AMP, the State DOT shall address the items in paragraphs (l)(1) through (7) to the extent practicable, consistent with the State DOT's needs and resources. This amendment is intended to clarify the intent of paragraph (l) that a State DOT should have the flexibility to address how optional assets are included in its AMP, consistent with the State DOT's needs and resources regarding those assets.

Section 515.11 Annual Consistency Determination

Section 515.11 currently describes the deadlines and process for phasing in the requirement for each State DOT to develop an AMP. These deadlines have all passed, and all State DOTs now have approved AMPs certified processes in place for developing updated AMPs. Therefore, FHWA is proposing to revise § 515.11 to cover the process for the annual determination by FHWA, required under 23 U.S.C. 119(e)(5), that a State DOT has developed and implemented an AMP consistent with 23 U.S.C. 119 and 23 CFR part 515 (“the annual consistency determination”). The annual consistency determination is currently discussed in § 515.13 alongside the requirements governing the certification and recertification of the State DOT's processes for developing the AMP, as required under 23 U.S.C. 119(e)(6). As discussed in greater detail below, § 515.13 would continue to cover the requirements for certification and recertification of the State DOT's processes for developing the AMP. As part of this reorganization, FHWA proposes to change the title of

§ 515.11 from “Deadlines and phase-in of asset management plan development” to “Annual consistency determination,” and the title of § 515.13 would change from “Process certification and recertification, and annual plan consistency review” to “Process certification and recertification.” Separating the requirements for the annual consistency determination and the requirements for process certification and recertification into separate sections will improve the readability of the rule.

The FHWA is also proposing changes to the process by which a State DOT submits, and FHWA reviews, an AMP for the annual consistency determination. First, FHWA is proposing to update the current schedule for State DOTs to submit required documents for the annual consistency determination review. In § 515.11(a), FHWA proposes that a State DOT shall submit the materials necessary for FHWA to make its annual consistency determination no later than July 1 of each year. Specifically, a State DOT would be required to submit its State-approved AMP that it intends to implement during the current implementation period (proposed paragraph (a)(1)) and documentation that demonstrates implementation, during the prior implementation period, of the State-approved AMP that FHWA previously determined to be consistent with the requirements of 23 U.S.C. 119 and 23 CFR part 515 as part of the annual consistency determination (proposed paragraph (a)(2)). The FHWA notes that although the timing of when a State DOT is required to submit information for the annual consistency determination would change under this proposed rule, the requirements for what a State DOT must submit for FHWA to make its annual consistency determination remain the same.

The FHWA is proposing an implementation period approach for the requirement that FHWA annually determine that a State DOT has developed a plan consistent with the requirements of 23 U.S.C. 119(e). As discussed in the section-by-section analysis for § 515.5, the implementation period means the 12-month period, beginning on June 1 and ending on May 31 of the following year, covered by an AMP for purposes of plan implementation and the annual consistency determination. Using an implementation period that runs from June 1 to May 31 of the following year will allow States to have a full 12 months of data to process when preparing appropriate documentation needed to show full implementation

that would need to be submitted to FHWA by July 1. Under proposed § 515.11(c)(1), FHWA would have until July 31, or 30 days, to make an annual consistency determination. This schedule is designed to provide adequate time for State DOT to take corrective action, if required due to a negative FHWA determination, before the September 30 statutory deadline for FHWA to complete the annual consistency determination. *See* 23 U.S.C. 119(e)(5)(B). The FHWA believes using a submission date later than July 1 would not provide adequate time for a State DOT to cure any deficiencies that FHWA may identify in the State DOT submission. In such case, the State could be found not to have complied with applicable requirements and be subject to penalty in accordance with 23 U.S.C. 119(e)(5)(A).

The FHWA is aware some State DOTs update their AMPs after July 1, obtain a determination from FHWA that the updated AMP is consistent with 23 U.S.C 119 requirements governing plan development and content, and begin to implement that updated AMP in the middle of an implementation period. When that happens, the State DOT is still required to submit documents on the next July 1 for a full consistency determination. Those documents, and FHWA’s determination, will have to account for the two plans the State DOT used during the Federal fiscal year: the AMP determined consistent prior to the beginning of the Federal fiscal year and the updated version. To address this scenario, proposed paragraph (b) provides the State DOT implementation documentation must describe any material changes to the State DOT’s investment strategies adopted in the updated AMP and explain any effects of the updates on the State DOT’s AMP implementation during the current Federal fiscal year.

Proposed paragraphs (c) and (d) describe the process that FHWA will use to conduct the annual consistency determination required by 23 U.S.C. 119(e)(5) and the scope of the annual consistency determination. Except as described below, these provisions are largely unchanged from what is currently required in § 515.13, except that the proposed rule provides that the annual consistency determination will be measured based on the June 1 to May 31 timeline. That is, FHWA must determine whether a State DOT has developed an AMP that is consistent with 23 U.S.C. 119 and part 515 for the current implementation period (*i.e.*, June 1 of the current year to May 31 of the following year) and whether the State DOT has implemented an AMP

consistent with 23 U.S.C. 119 and part 515 for the prior implementation period (*i.e.*, June 1 of the previous year to May 31 of the current year).

In § 515.11(d)(2), FHWA proposes to clarify that State DOTs must show as part of the documentation that demonstrates implementation of the AMP, that State DOTs used investment strategies that are applicable to make progress toward achievement of its targets for asset condition and performance of the NHS to support progress toward the national goals identified in 23 U.S.C. 150(b), to improve or preserve asset conditions, increase system resiliency, and reduce or mitigate high priority risks.

In § 515.11(d)(2)(ii), the FHWA is proposing that a State DOT may also demonstrate plan implementation without addressing funding allocations by work type. In such case, the State DOT would show how, in the 12 months preceding the FHWA implementation determination, that the State DOT used the applicable AMP’s investment strategies for NHS pavement and bridge assets to meet the requirements in § 515.11(d)(2). In addition, FHWA is proposing under § 515.11(d)(2)(ii) that State DOT must describe how the actual total pavement or bridge expenditures were consistent with the investment strategies in the State DOT AMP even though the expenditures are not by work type.

In proposed paragraph (e), FHWA is proposing that a State DOT may update its AMP as often as it considers necessary, but it must review and update its AMP at least every 4 years as measured from the most recent FHWA recertification of the State DOT’s processes for developing the TAMP. The State DOT would have to submit AMP changes to FHWA for a determination that the updated AMP is consistent with the requirements in 23 U.S.C. 119 and part 515 except when the changes are minor technical corrections or revisions with no foreseeable material impact on the accuracy, adequacy, or validity of the analyses or investment strategies in the AMP. For example, a State DOT would not need to submit changes in the format of the AMP or a change to a point of contact for the plan before the annual consistency determination.

Section 515.13 Process Certification and Recertification

The FHWA proposes to rename § 515.13 “Process certification and recertification” because requirements governing the annual consistency determination would be moved to § 515.11, and § 515.13 would be revised to focus on the processes by which the

State DOTs will submit to FHWA their AMP development processes for recertification pursuant to 23 U.S.C. 119(e)(6). In proposed paragraph (a), FHWA is proposing to require a State DOT to submit its AMP development processes to FHWA for recertification not later than 4 years after the date that FHWA initially certified or subsequently recertified the State DOT's processes. This is consistent with the existing requirement that a State DOT update and resubmit its processes at least every 4 years, beginning on the date of FHWA's certification of the State DOT's processes. *See* 23 CFR 515.13(c). A State DOT would also be required to resubmit its processes for recertification whenever it makes changes to a process except when the changes are minor technical corrections or revisions with no foreseeable material impact on the accuracy, adequacy, and validity of the processes. A State DOT would have the option to submit its processes for recertification as a standalone document or as part of an updated TAMP.

In addition, FHWA is proposing in paragraph (b) to reduce the time by which FHWA provides a decision whether to recertify a State DOT's processes from 90 days to 60 days. State DOTs and FHWA regularly discuss updates to State DOT processes as the updates are in progress and while State DOTs work to develop their AMPs. Consequently, FHWA is often aware of these updates prior to receiving a formal request, which tends to reduce the time to review certify amended processes. Therefore a 60-day review time for FHWA would be appropriate. Similarly, in proposed paragraph (d), FHWA is proposing that a State DOT would have 60 days to address any minor deficiencies that FHWA identifies instead of the 90 days as currently provided. Except for minor technical changes and the proposed changes described above, the procedures for FHWA to recertify a State DOT's processes, including the procedure for curing deficiencies, would remain the same.

The FHWA intends for this proposal to provide State DOTs with flexibility on the timing of their requests for certification or recertification of TAMP development processes under 23 CFR 515.13(a). However, FHWA encourages State DOTs to consider possible impacts on the annual consistency review when they choose to submit their AMP processes to FHWA. For example, a State DOT might submit as a package on July 1 updated processes together with an updated AMP developed using the updated processes. In that scenario, the State DOT would ask FHWA for both a

process recertification under 23 CFR 515.13(a) and a consistency determination under 23 CFR 515.11(c). If FHWA finds both the updated processes and the updated AMP comply with applicable requirements, this approach could work well. However, if FHWA finds it is unable to recertify the State DOT's updated processes as submitted, the State DOT would need to correct the cited deficiencies in its processes, revise its AMP to reflect the changes, resubmit the processes and AMP for FHWA review, and receive FHWA's final decisions on process recertification and the consistency determination. If the time required to accomplish these steps extends beyond October 1, then the State DOT's AMP would not meet the requirement in 23 U.S.C. 119(e)(5)(A) that the AMP be developed consistent with requirements in 23 U.S.C. 119(e) and 23 CFR part 515, the State DOT AMP would receive a negative consistency determination, and the State DOT would be subject to the penalty described in 23 U.S.C. 119(e)(5)(A). Although there are cure periods in regulation for addressing deficiencies found during the TAMP process certification reviews, there is a risk that the State will incur a penalty under 23 U.S.C. 119(e)(5)(A). Some States may find the risks of receiving a negative consistency determination or incurring a penalty outweigh the convenience of a consolidated submission of the State DOT's updated processes simultaneously with an AMP developed using those processes.

Section 515.15 Penalties

This section discusses the statutory penalties for State DOTs that do not develop and implement an AMP consistent with the requirements of 23 U.S.C. 119 and 23 CFR part 515. The penalties that the FHWA is proposing in this section are penalties required by law. *See* 23 U.S.C. 119(e)(5)(A). The FHWA is proposing several revisions to this section.

The FHWA proposes to clarify that on October 1 of each Federal fiscal year, instead of each fiscal year, that if a State DOT has not developed and implemented an AMP consistent with 23 U.S.C. 119, the State DOT would be subject to the statutory penalty described at 23 U.S.C. 119(e)(5)(A), specifically, that the maximum Federal share payable on account of any project or activity for which funds are obligated by the State in that fiscal year under the NHPP shall be 65 percent. The current rule language references October 1, 2019, but a reference to a specific year is no longer needed because the requirement to develop and implement

an AMP has been fully phased in. The proposed updates to this section also more clearly reflect the language in the statute. In addition, FHWA is proposing to revise section 515.15 to align this rule with newly written language in sections 515.7 and 515.9. The FHWA proposes to delete paragraph (b) because the deadline in paragraph (b) has passed and FHWA is not aware of any instances in which State DOTs have not established performance targets for pavements and bridges in accordance with 23 U.S.C. 150.

Section 515.17 Minimum Standards for Developing and Operating Bridge and Pavement Management Systems

In the introductory text to § 515.17, FHWA proposes to amend the reference to "States" to read "a State DOT" for consistency with the rest of part 515. No other changes are proposed for § 515.17.

Section 515.19 Organizational Integration of Asset Management

In paragraph (c), FHWA proposes to add the development of the long-range statewide transportation plan alongside the STIP to the items that a State DOT should consider when conducting a periodic self-assessment of its capabilities to conduct asset management and its current efforts to implement an AMP. As discussed above regarding a similar proposed change to § 515.9(h), the development of the long-range statewide transportation plan contains important connections to asset management, so it is reasonable to include this as a consideration when the State DOT conducts a periodic self-assessment of its asset management capabilities. This proposed revision is intended to improve the capacity of State DOTs to integrate asset management into their organizational missions, cultures, and capabilities. As stated in paragraph (a), these activities are not requirements, and the proposed change to paragraph (c) does not create any new requirements for State DOTs.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has considered the impacts of this rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as amended by E.O. 14094, Modernizing Regulatory Review (88 FR 21879, April 11, 2023), and DOT's regulatory policies and procedures. This proposed rule complies with E.O. 12866 and E.O.

13563 to improve regulation. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has determined that this rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866. Accordingly, OMB has not reviewed it under that E.O.

It is anticipated that the proposed rule would not be economically significant for purposes of E.O. 12866. The proposed rule would not have an annual effect on the economy of \$200 million or more. The proposed rule would not adversely affect in a material way the economy, any sector of the economy, productivity, competition, or jobs. In addition, the proposed changes would not interfere with any action taken or planned by another Agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

The FHWA estimated the incremental costs associated with the new requirements in the proposed rule that represent a change to the current practices of State DOTs in developing their AMPs. The FHWA and FTA derived this estimate by assessing the expected increase in the level of effort and costs associated with implementing the changes to AMP procedures in this proposed rule. Based on this analysis, FHWA estimates that this proposed rule would have an annual cost impact to States ranging from \$3 million to \$7 million. These costs are attributable to the proposed rule's requirement that an AMP's risk management and lifecycle planning analyses consider extreme weather and resilience. The FHWA presents this estimated cost increase as a range because variation among State DOTs is expected in the nature of the resilience analysis given differences in risk profiles, the quantity of bridge and pavement assets, local variation in costs, and general variation in costs from year-to-year to include in their AMPs.

The FHWA estimates that this proposed rule will generate various benefits to State DOTs and the public resulting from improvements to the provision of transportation infrastructure. Because these benefits are difficult to quantify, FHWA discusses the potential benefits of this proposed rule qualitatively. For example, States may realize cost savings from considering extreme weather and resilience in the context of risk management and lifecycle planning analyses if the analyses conducted for the AMP result in greater State investment in resilient infrastructure that is less vulnerable to the impacts of sea level rise, extreme weather events, flooding, wildfires, or other natural

disasters. A supporting statement in the rulemaking docket (FHWA–2024–0048) contains additional details on FHWA's economic analysis of this proposed rule. The FHWA requests data and comments that could inform the economic analysis for this proposed rule, including any estimates of resulting benefits.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed rule on small entities and has determined that the action is not anticipated to have a significant economic impact on a substantial number of small entities. The proposed rule affects State governments, and State governments do not meet the definition of a small entity. Therefore, FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FHWA has evaluated this proposed rule for unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. As part of this evaluation, FHWA has determined that this proposed rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of greater than \$183 million or more in any one year (2 U.S.C. 1532).

Further, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal governments and the private sector. In addition, the definition of “Federal Mandate” in the Unfunded Mandate Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal

Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

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

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under E.O. 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal law. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under E.O. 13211 is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal Agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. A 60-day notice to approve the collection of information relating to AMPs was published in the **Federal Register** on May 30, 2024 (89 FR 46985). A 30-day notice to approve the collection of information relating to AMPs was published in the **Federal Register** on August 21, 2024 (89 FR 67705).

The FHWA is required to submit the proposed collection of information to OMB for review and approval and, accordingly, seek public comments. Interested parties are invited to comment regarding any aspect of these information collection requirements, including, but not limited to: (1) whether the collection of information is

necessary for the performance of the functions of FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The Agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20), which applies to the promulgation of regulations, and that no unusual circumstances are present under 23 CFR 771.117(b).

Executive Order 12898 (Environmental Justice)

The E.O. 12898 requires that each Federal Agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this proposed rule does not raise any environmental justice issues.

Regulation Identification Number

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

List of Subjects

23 CFR Part 500

Bridges, grant programs—transportation, highway traffic safety, highways and roads, mass transportation, reporting and recordkeeping requirements.

23 CFR Part 515

Asset management, highways and roads, reporting and recordkeeping requirements, transportation.

Kristin R. White,

Acting Administrator, Federal Highway Administration.

For the reasons stated in the preamble, and under the authority of 23 U.S.C. 315, FHWA proposes to amend 23 CFR parts 500 and 515 as follows:

PART 500—[REMOVED AND RESERVED]

- 1. Remove and reserve part 500, consisting of §§ 500.101 through 500.204.
- 2. Revise part 515 to read as follows:

PART 515—ASSET MANAGEMENT PLANS

Sec.

- 515.1 Purpose.
- 515.3 Applicability.
- 515.5 Definitions.
- 515.7 Process for developing the asset management plan.
- 515.9 Asset management plan requirements.
- 515.11 Annual consistency determination.
- 515.13 Process certification and recertification.
- 515.15 Penalties.
- 515.17 Minimum standards for developing and operating bridge and pavement management systems.
- 515.19 Organizational integration of asset management.

Authority: Sec. 1106 and 1203 of Pub. L. 112–141, 126 Stat. 405; 23 U.S.C. 109, 119(e), 144, 150(c), and 315; 49 CFR 1.85(a).

§515.1 Purpose.

The purpose of this part is to:

- (a) Establish the processes that a State department of transportation (State DOT) must use to develop its asset management plan, as required under 23 U.S.C. 119(e)(8);
- (b) Establish the minimum requirements that apply to the development of an asset management plan;
- (c) Describe the penalties for a State DOT's failure to develop and implement an asset management plan in accordance with 23 U.S.C. 119 and this part;
- (d) Set forth the minimum standards for a State DOT to use in developing and operating highway bridge and pavement management systems under 23 U.S.C. 150(c)(3)(A)(i).

§515.3 Applicability.

This part applies to all State DOTs.

§515.5 Definitions.

As used in this part:

Asset means all physical highway infrastructure located within the right-of-way corridor of a highway. The term *asset* includes all components necessary for the operation of a highway including pavements, highway bridges, tunnels, signs, ancillary structures, and other physical components of a highway.

Asset class means assets with the same characteristics and function (e.g., bridges, culverts, tunnels, pavements, or guardrail) that are a subset of a group or collection of assets that serve a common function (e.g., roadway system, safety, Intelligent Transportation Systems (ITS), signs, or lighting).

Asset condition means the actual physical condition of an asset.

Asset management means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the life cycle of the assets at minimum practicable cost.

Asset management plan means a document that describes how a State DOT will carry out asset management as defined in this section. This includes how the State DOT will make risk-based decisions from a long-term assessment of the National Highway System (NHS), and other public roads included in the plan at the option of the State DOT, as it relates to managing its physical assets and laying out a set of investment strategies to address the condition and system performance gaps. This document describes how the highway network system will be managed to achieve State DOT targets for asset condition and system performance effectiveness while managing the risks, in a financially responsible manner, at a minimum practicable cost over the life cycle of its assets. The term *asset management plan* under this part is the risk-based asset management plan that is required under 23 U.S.C. 119(e) and is intended to carry out asset management as defined in 23 U.S.C. 101(a)(2).

Asset sub-group means a specialized group of assets within an asset class with the same characteristics and function (e.g., concrete pavements or asphalt pavements.)

Bridge as used in this part, is defined in 23 CFR 650.305, the National Bridge Inspection Standards.

Climate change means any significant change in the measures of climate lasting for an extended period of time. Climate change includes major

variations in temperature, precipitation, or wind patterns, among other environmental conditions, that occur over several decades or longer and poses adverse impacts to the condition of assets. Climate change may manifest as a rise in sea level, as well as increase the frequency and magnitude of extreme weather events now and in the future.

Critical infrastructure means those facilities the incapacity or failure of which would have a debilitating impact on national or regional economic security, national or regional energy security, national or regional public health or safety, or any combination of those matters.

Extreme weather events mean events that can include significant anomalies in temperature, precipitation, and winds and can manifest as heavy precipitation and flooding, heatwaves, drought, wildfires, and windstorms (including tornadoes and tropical storms). Consequences of extreme weather events can include safety concerns, damage, destruction, and/or economic loss. Climate change can also cause or influence extreme weather events.

Financial plan means a long-term plan spanning 10 years or longer, presenting a State DOT's estimates of projected available financial resources and predicted expenditures in major asset categories that can be used to achieve State DOT targets for asset condition during the plan period, and highlighting how resources are expected to be allocated based on asset strategies, needs, shortfalls, and agency policies.

Implementation period means the 12-month period, beginning on June 1 and ending on May 31 of the following year, covered by an asset management plan for purposes of plan implementation and the annual consistency determination.

Investment strategy means a set of strategies that result from evaluating various levels of funding to achieve State DOT targets for asset condition and system performance effectiveness at a minimum practicable cost while managing risks.

Life-cycle cost means the cost of managing an asset class or asset sub-group for its whole life, from initial construction to its replacement.

Life-cycle planning means a process to analyze strategies for managing an asset class, or asset sub-group, and the included assets over their whole life with demonstrated consideration for extreme weather events and resilience, minimizing cost while preserving or improving their condition, and extending the life of the assets. It includes analyzing life-cycle cost, condition, and other life-cycle benefits

of alternative strategies that vary by work type and timing.

Long-range statewide transportation plan has the same meaning as defined in § 450.104 of this title.

Minimum practicable cost means lowest feasible cost to achieve the objective.

NHS pavements and bridges and NHS pavement and bridge assets mean Interstate System pavements (inclusion of ramps that are not part of the roadway normally traveled by through traffic is optional); NHS pavements (excluding the Interstate System) (inclusion of ramps that are not part of the roadway normally traveled by through traffic is optional); and NHS bridges carrying the NHS (including bridges that are part of the ramps connecting to the NHS).

Performance of the NHS refers to the effectiveness of the NHS in providing for the safe and efficient movement of people and goods where that performance can be affected by physical assets. This term does not include the performance measures established for performance of the Interstate System and performance of the NHS (excluding the Interstate System) under 23 U.S.C. 150(c)(3)(ii)(A)(IV)–(V).

Performance gap means the gaps between the current asset condition and State DOT targets for asset condition, and the gaps in system performance effectiveness that are best addressed by improving the physical assets.

Resilience has the same meaning as defined in 23 U.S.C. 101(a)(24), except that, under this part, resilience is evaluated at the system level.

Risk means the positive or negative effects of uncertainty or variability upon agency objectives.

Risk management means the processes and framework for managing potential risks, such as adverse impacts associated with extreme weather events and other risks to system resilience. Risk management includes the identification, analysis, evaluation, and management of risks to assets and system performance.

Statewide Transportation Improvement Program (STIP) has the same meaning as defined in § 450.104 of this title.

Work type means the categories of work utilized by a State DOT to strategically and systematically operate, maintain, and improve physical assets. Work type categories may include initial construction, maintenance, preservation, rehabilitation, and reconstruction.

§ 515.7 Process for developing the asset management plan.

A State DOT shall develop and use, at a minimum, the following processes to prepare its asset management plan:

(a) A process for conducting a performance gap analysis to identify deficiencies hindering progress toward improving or preserving the NHS and achieving and sustaining the desired state of good repair. The State DOT's process must produce, at a minimum, the following information:

(1) The gap(s) between the existing asset conditions of NHS pavements and bridges and:

(i) The state of good repair (as defined by the State DOT); and

(ii) The State DOT's targets for asset condition of NHS pavements and bridges as established by the State DOT.

(2) The gaps, if any, in the performance-of the NHS that affect NHS pavements and bridges regardless of their physical condition; and

(3) Alternative strategies to close or address the identified gaps. The strategies for closing or addressing gaps identified pursuant to paragraph (2) must consider strategies identified in the State DOT's performance-based plans.

(b) A process for conducting life-cycle planning for an asset class or asset sub-group at the system level. As a State DOT develops its life-cycle planning process, the State DOT should include future changes in demand; information on current and future environmental conditions including extreme weather events, climate change, and seismic activity; cost impacts related to the presence or absence of resilience; and other factors that could impact whole-of-life costs of assets. The State DOT may propose excluding one or more asset sub-groups from its life-cycle planning process if the State DOT can demonstrate to FHWA that the exclusion of the asset sub-group would have no material adverse effect on the development of sound investment strategies due to the limited number of assets in the asset sub-group, the low level of cost associated with managing the assets in that asset sub-group, or other justifiable reasons. The State DOT's life-cycle planning process must produce, at a minimum, the following information:

(1) A description of the State DOT targets for asset condition for each asset class or asset sub-group;

(2) The deterioration models used for each asset class or asset sub-group of NHS pavements and bridges, which shall demonstrate consideration of resilience and extreme weather events;

(3) Potential work types across the whole life of each asset class or asset sub-group with their relative unit cost; and

(4) A strategy for managing each asset class or asset sub-group by minimizing its life-cycle costs, while achieving the State DOT targets for asset condition for NHS pavements and bridges under 23 U.S.C. 150(d).

(c) A process for developing a risk management analysis. The State DOT's process must produce, at a minimum, the following information:

(1) Identification of risks that can affect the condition of NHS pavements and bridges and the performance of the NHS, including resilience. Risks to resilience include risks associated with current and future environmental conditions, such as extreme weather events, climate change, seismic activity, and risks related to recurring damage and costs as identified through the evaluation of facilities repeatedly damaged by emergency events carried out under part 667 of this title.

Examples of other risk categories include financial risks such as budget uncertainty; operational risks such as asset failure; and strategic risks to achievement of State DOT objectives and goals, such as compliance with environmental requirements or meeting organizational needs.

(2) An assessment of the identified risks in terms of the likelihood of their occurrence and their impact and consequence if they do occur;

(3) An evaluation and prioritization of the identified risks. A State DOT must treat risks to system resilience as top priority risks if the State DOT identifies such risk(s) under paragraph (c)(1);

(4) A mitigation plan for addressing the top priority risks;

(5) An approach for monitoring the top priority risks; and

(6) A summary of the evaluations of facilities repeatedly damaged by emergency events carried out under part 667 of this title that discusses, at a minimum, the results relating to the State's NHS pavements and bridges.

(d) A process for developing a financial plan that identifies annual costs over a minimum period of 10 years. The State DOT's process must produce, at a minimum, the following information:

(1) The estimated cost of expected future work to implement investment strategies contained in the asset management plan, by State fiscal year and work type;

(2) The estimated funding levels that are expected to be reasonably available, by fiscal year, to address the costs of future work types. A State DOT may

estimate the amount of available future funding using historical values where the future funding amount is uncertain;

(3) Anticipated funding sources; and

(4) An estimate of the value of the State DOT's NHS pavement and bridge assets and the needed investment on an annual basis to maintain the value of these assets.

(e) A process for developing investment strategies meeting the requirements in § 515.9(f). The State DOT's process must produce a description of how the selected investment strategies are influenced, at a minimum, by the following:

(1) Strategies identified through the performance gap analysis resulting from the process required under paragraph (a) of this section;

(2) Strategies identified through the life-cycle planning analysis resulting from the process required under paragraph (b) of this section;

(3) Strategies identified through the risk management analysis resulting from the process required under paragraph (c) of this section;

(4) Consideration for how the selected investment strategies would sustain and maintain a state of good repair over the life-cycle of the assets, leading to an improvement in the performance of the NHS and improved travel times;

(5) Consideration for how the selected investment strategies would sustain and maintain a state of good repair over the life-cycle of the assets, resulting in deferred replacement of assets at minimum practicable cost; and

(6) Anticipated available funding and estimated cost of expected future work types identified as a result of the process required under paragraph (d) of this section and associated with selected strategies identified as a result of the processes for performance gap, life-cycle planning, and risk management analyses described in paragraphs (a)-(c) of this section.

(f) The State DOT's processes shall include a provision for the State DOT to obtain necessary data from other NHS owners in a collaborative and coordinated effort.

(g) A State DOT shall use the best available data to develop their asset management plans. Pursuant to 23 U.S.C. 150(c)(3)(A)(i), each State DOT shall use bridge and pavement management systems meeting the requirements of § 515.17 to analyze the condition of NHS pavements and bridges for the purpose of developing and implementing the asset management plan required under this part. The use of these or other management systems for other assets that the State DOT elects to include in

the asset management plan is optional (e.g., Sign Management Systems, etc.).

§ 515.9 Asset management plan requirements.

(a) A State DOT shall develop and implement an asset management plan to improve or preserve the condition of the assets and improve the performance of the NHS in accordance with the requirements of 23 U.S.C. 119 and this part. Asset management plans must describe how the State DOT will carry out asset management as defined in § 515.5.

(b) An asset management plan shall include, at a minimum, a summary listing of NHS pavement and bridge assets, regardless of ownership.

(c) In addition to the assets specified in paragraph (b) of this section, State DOTs are encouraged, but not required, to include all other NHS infrastructure assets within the right-of-way corridor and assets on other public roads.

Examples of other NHS infrastructure assets include tunnels, ancillary structures, and signs. Examples of other public roads include non-NHS Federal-aid highways. If a State DOT decides to include other NHS assets in its asset management plan, or to include assets on other public roads, the State DOT, at a minimum, shall evaluate and manage those assets consistent with paragraph (l) of this section.

(d) The minimum content for an asset management plan under this part includes a discussion of each element in this paragraph (d).

(1) Asset management objectives. The objectives should align with the State DOT's mission. The objectives must be consistent with the purpose of asset management, which is to achieve and sustain the desired state of good repair over the life cycle of the assets at a minimum practicable cost.

(2) Asset management measures and State DOT targets for asset condition, including those established pursuant to 23 U.S.C. 150, for NHS pavements and bridges. The plan must include measures and associated targets the State DOT can use in assessing the condition of the assets and performance of the highway system as it relates to those assets. The measures and targets must be consistent with the State DOT's asset management objectives. The State DOT must include the measures established under 23 U.S.C.

150(c)(3)(A)(ii)(I)-(III), as promulgated in part 490 of this title, for the condition of NHS pavements and bridges. The State DOT also must include the targets the State DOT has established for the measures required by 23 U.S.C. 150(c)(3)(A)(ii)(I)-(III) and report on

such targets in accordance with part 490 of this title. The State DOT may include measures and targets for NHS pavements and bridges that the State DOT established through pre-existing management efforts or develops through new efforts if the State DOT wishes to use such additional measures and targets to supplement information derived from the pavement and bridge measures and targets required under 23 U.S.C. 150.

(3) A summary description of the condition of NHS pavements and bridges, regardless of ownership. The summary must include a description of the condition of those assets based on the performance measures established under 23 U.S.C. 150(c)(3)(A)(ii) for condition. The description of condition should be informed by evaluations required under part 667 of this title of facilities repeatedly damaged by emergency events.

(4) Performance gap analysis results, including strategies to close identified gaps.

(5) Life-cycle planning analysis results that demonstrate consideration of extreme weather events and resilience and include strategies for managing each asset class or asset subgroup.

(6) Risk management analysis results that demonstrate consideration extreme weather events and resilience, and that include strategies to eliminate or reduce top priority risks.

(7) Financial plan.

(8) Investment strategies that demonstrate alignment with the various levels of funding evaluated by the State DOT to achieve targets for asset condition and system performance effectiveness at a minimum practicable cost while managing risks.

(e) An asset management plan shall cover, at a minimum, a 10-year period.

(f) An asset management plan shall discuss how the plan's investment strategies collectively would make or support progress toward:

(1) Achieving and sustaining a desired state of good repair over the life cycle of the assets;

(2) Improving or preserving the condition of the assets and the performance of the NHS relating to physical assets;

(3) Achieving the State DOT targets for asset condition and performance of the NHS in accordance with 23 U.S.C. 150(d);

(4) Achieving the national goals identified in 23 U.S.C. 150(b); and

(5) Addressing risks from extreme weather events and risks to system resilience described in § 515.7(c)(1).

(g) A State DOT must include in its plan a description of how the analyses required using processes developed in accordance with § 515.7 (such as analyses pertaining to life-cycle planning, risk management, and performance gaps) support the State DOT's asset management plan investment strategies.

(h) A State DOT shall integrate its asset management plan into its transportation planning processes that lead to the long-range Statewide transportation plan and the STIP, to support its efforts to achieve the goals in paragraphs (f)(1) through (5) of this section.

(i) A State DOT is required to make its asset management plan available to the public, and is encouraged to do so in a format that is easily accessible.

(j) Inclusion of performance measures and State DOT targets for NHS pavements and bridges established pursuant to 23 U.S.C. 150 in the asset management plan does not relieve the State DOT of any performance management requirements, including 23 U.S.C. 150(e) reporting, established in other parts of this title.

(k) The head of the State DOT shall approve the asset management plan.

(l) If the State DOT elects to include other NHS infrastructure assets or other public roads assets in its asset management plan, the State DOT shall address to the extent practicable the following with respect to such assets, using a level of effort consistent with the State DOT's needs and resources:

(1) Summary listing of assets, including a description of asset condition;

(2) Asset management measures and State DOT targets for asset condition;

(3) Performance gap analysis;

(4) Life-cycle planning;

(5) Risk analysis, including summaries of evaluations carried out under part 667 of this title for the assets, if available, and consideration of those evaluations;

(6) Financial plan; and

(7) Investment strategies.

(m) An asset management plan may include consideration of critical infrastructure from among those facilities in the State that are eligible under 23 U.S.C. 119(c).

§ 515.11 Annual consistency determination.

(a) *State DOT submission deadline.* Not later than July 1 of each year, a State DOT shall submit to FHWA:

(1) The State-DOT approved asset management plan that State DOT intends to implement during the current implementation period and that

includes all information required under § 515.9 and that is developed using processes described in § 515.7 that have been certified by FHWA; and

(2) Documentation that demonstrates implementation, during the prior implementation period, of the State-DOT approved asset management plan that FHWA previously determined to be consistent with the requirements of 23 U.S.C. 119 and this part as part of the annual consistency determination as provided in this section.

(b) *Updates during current implementation period.* If, during the current implementation period, a State begins implementation of an updated asset management plan adopted in compliance with paragraph (e) of this section, the State DOT documentation under paragraph (a) must describe any material changes in investment strategies in its updated plan and explain any effects of the updated plan on its implementation during the current implementation period.

(c) *Annual determination of plan consistency and implementation under 23 U.S.C. 119(e)(5).*

(1) Based on the State DOT submissions pursuant to paragraph (a), and not later than July 31 of each year, FHWA will notify the State DOT whether:

(i) The asset management plan submitted under paragraph (a)(1) covering an implementation period beginning on June 1 and ending on May 31 of the following year is consistent with the requirements in 23 U.S.C. 119 and this part; and

(ii) The documentation submitted under paragraph (a)(2) demonstrates that the State DOT has implemented an asset management plan consistent with 23 U.S.C. 119 and this part during the prior implementation period.

(2) The notice will be in writing and, in the case of a negative determination, will specify the deficiencies the State DOT needs to address. In the event FHWA notifies a State DOT of a negative determination under paragraphs (a)(1) or (a)(2), the State DOT will have 30 days to address the deficiencies. The State DOT may submit additional information showing the FHWA negative determination was in error or demonstrating the State DOT has taken corrective action that resolves the deficiencies specified in FHWA's negative determination.

(d) *Scope of annual plan consistency and implementation determinations.*

(1) *Plan consistency.* The FHWA will review the State DOT's asset management plan submitted pursuant to paragraph (a)(1) to ensure that it was developed with FHWA-certified

processes, includes the required content, and is consistent with other applicable requirements in 23 U.S.C. 119 and this part.

(2) *Plan implementation.* The State DOT must demonstrate implementation of an asset management plan during the prior implementation period that FHWA previously determined to be consistent with the requirements of 23 U.S.C. 119 and this part. The State DOT's submission under paragraph (a)(2) must show that the State DOT used the investment strategies in the applicable asset management plan to make progress toward achievement of its targets for asset condition and performance of the NHS, to support progress toward the national goals identified in 23 U.S.C. 150(b), to improve or preserve asset conditions, increase system resiliency, and reduce or mitigate high priority risks. A State DOT may determine the most suitable approach for demonstrating implementation of its asset management plan, so long as the information submitted pursuant to paragraph (a)(2) is documented, verifiable, and covers the prior implementation period.

(i) FHWA considers the best evidence of plan implementation to be that, for the prior 12-month implementation period, the State DOT funding allocations were reasonably consistent with the investment strategies in the applicable State DOT asset management plan. This demonstration takes into account the alignment between the actual and planned levels of investments for various work types (*i.e.* initial construction, maintenance, preservation, rehabilitation, and reconstruction).

(ii) A State DOT may also demonstrate plan implementation without addressing funding allocations by work type. In such case, the State DOT would show how, during the prior 12-month implementation period, the State DOT used the applicable asset management plan's investment strategies for NHS pavement and bridge assets to meet the requirements in paragraph (d)(2).

(iii) FHWA may find a State DOT has implemented its asset management plan even if the State has deviated from the investment strategies included in its asset management plan, if the State DOT shows the deviation was necessary due to extenuating circumstances beyond the State DOT's reasonable control.

(3) *The FHWA determination.* The FHWA determination under this section is made only with respect to the consistency of the State DOT asset management plan with applicable requirements and State DOT implementation of its asset management

plan. The FHWA determinations are not an approval or disapproval by FHWA of strategies or other decisions contained in the asset management plan.

(4) *Additional assets.* With respect to any assets the State DOT may elect to include in its asset management plan in addition to NHS pavement and bridge assets, the FHWA consistency determination will consider only whether the State DOT has complied with § 515.9(l) with respect to such discretionary assets.

(e) *Plan update.* The State DOT may update its asset management plan as often as it considers necessary, however, the State DOT must review and update its asset management plan at least every four years as measured from the most recent FHWA recertification of the processes used by the State DOT to develop the State asset management plan. The State DOT must submit asset management plan changes to FHWA for a determination that the updated asset management plan is consistent with the requirements in 23 U.S.C. 119 and this part except when the changes are minor technical corrections or revisions with no foreseeable material impact on the accuracy, adequacy, or validity of the analyses or investment strategies in the asset management plan.

§ 515.13 Process certification and recertification.

(a) Not later than 4 years after the initial FHWA certification or subsequent recertification that a State DOT's processes meet the requirements of 23 U.S.C. 119 and this part, the State DOT must submit its asset management plan development processes for recertification. A State DOT also must submit its processes for recertification whenever it makes changes to the process(es) except when the changes are minor technical corrections or revisions with no foreseeable material impact on the accuracy, adequacy, and validity of the processes. A State DOT may submit its processes as a stand-alone document or as part of an updated State-approved asset management plan.

(b) Not later than 60 days after the date on which the FHWA Division Office receives a State DOT's processes and request for recertification, FHWA shall determine whether the State DOT's processes for developing its asset management plan meet the requirements of 23 U.S.C. 119 and this part. If FHWA determines that the processes do not meet the requirements established under 23 U.S.C. 119 and this part, FHWA will send the State DOT a written notice of the denial of recertification that includes a listing of the specific deficiencies.

(c) Upon receiving a notice of denial of recertification, the State DOT shall have 90 days from receipt of the notice to address the deficiencies identified in the notice and resubmit the State DOT's processes to FHWA for review and recertification. The FHWA may extend the State DOT's 90-day period to cure deficiencies upon request. During the cure period established, all penalties and other legal impacts of a denial of recertification shall be stayed as provided in 23 U.S.C. 119(e)(6)(C)(i).

(d) If FHWA finds that a State DOT's asset management processes substantially meet the requirements of 23 U.S.C. 119 and this part except for minor deficiencies, FHWA may recertify the State DOT's processes as being in compliance, but the State DOT must take actions to correct the minor deficiencies within 60 days of receipt of the notification of recertification. The State DOT shall notify FHWA in writing when corrective actions are completed.

§ 515.15 Penalties.

Beginning on October 1 of each Federal fiscal year, if a State DOT has not developed an asset management plan consistent with the requirements of 23 U.S.C. 119 and this part and has not implemented an asset management plan determined to be consistent with the requirements of 23 U.S.C. 119 and this part, the maximum Federal share for National Highway Performance Program projects or activities for which funds are obligated by the State in that fiscal year shall be reduced to 65 percent.

§ 515.17 Minimum standards for developing and operating bridge and pavement management systems.

Pursuant to 23 U.S.C. 150(c)(3)(A)(i), this section establishes the minimum standards a State DOT must use for developing and operating bridge and pavement management systems. State DOT bridge and pavement management systems are not subject to FHWA certification under § 515.13. Bridge and pavement management systems shall include, at a minimum, documented procedures for:

(a) Collecting, processing, storing, and updating inventory and condition data for all NHS pavement and bridge assets.

(b) Forecasting deterioration for all NHS pavement and bridge assets;

(c) Determining the benefit-cost over the life cycle of assets to evaluate alternative actions (including no action decisions), for managing the condition of NHS pavement and bridge assets;

(d) Identifying short- and long-term budget needs for managing the condition of all NHS pavement and bridge assets;

(e) Determining the strategies for identifying potential NHS pavement and bridge projects that maximize overall program benefits within the financial constraints; and

(f) Recommending programs and implementation schedules to manage the condition of NHS pavement and bridge assets within policy and budget constraints.

§ 515.19 Organizational integration of asset management.

(a) The purpose of this section is to describe how a State DOT may integrate asset management into its organizational mission, culture and capabilities at all levels. The activities described in paragraphs (b) through (d) of this section are not requirements.

(b) A State DOT should establish organizational strategic goals and include the goals in its organizational strategic implementation plans with an explanation as to how asset management will help it to achieve those goals.

(c) A State DOT should conduct a periodic self-assessment of the agency's capabilities to conduct asset management, as well as its current efforts in implementing an asset management plan. The self-assessment should consider, at a minimum, the adequacy of the State DOT's strategic goals and policies with respect to asset management, whether asset management is considered in the agency's planning and programming of resources, including development of the long-range statewide transportation plan and the STIP; whether the agency is implementing appropriate program delivery processes, such as consideration of alternative project delivery mechanisms, effective program management, and cost tracking and estimating; and whether the agency is implementing adequate data collection and analysis policies to support an effective asset management program.

(d) Based on the results of the self-assessment, the State DOT should conduct a gap analysis to determine which areas of its asset management process require improvement. In conducting a gap analysis, the State DOT should:

(1) Determine the level of organizational performance effort needed to achieve the objectives of asset management;

(2) Determine the performance gaps between the existing level of performance effort and the needed level of performance effort; and

(3) Develop strategies to close the identified organizational performance

gaps and define the period of time over which the gap is to be closed.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 84

RIN 2900–AS20

Telehealth Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulation to implement a new authority to establish a telehealth grant program. This new authority requires VA to enter into agreements, and expand existing agreements, for the expansion of VA telehealth capabilities and provision of telehealth services by establishing telehealth access stations in rural, highly rural, or medically underserved areas, to the extent practicable. We also propose to amend the copayment regulation by exempting all telehealth services from the copayment requirement.

DATES: Comments must be received on or before January 13, 2025.

ADDRESSES: Comments may be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. VA will not post on [Regulations.gov](https://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a 100 word Plain-Language Summary of this

proposed rule is available at [Regulations.gov](https://www.regulations.gov), under RIN 2900–AS20.

FOR FURTHER INFORMATION CONTACT:

Leonie Heyworth, MD, MPH, Deputy Director for Clinical Services, Telehealth Services, Office of Connected Care, 810 Vermont Ave. NW, Washington, DC 20420, 202–461–6525. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

On October 17, 2020, the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019 (the Act), Public Law 116–171, was enacted into law. Section 701 of the Act, codified as a note to section 1701 of title 38, United States Code (U.S.C.), mandated that VA enter into agreements, and expand existing agreements, with organizations that represent or serve veterans, nonprofit organizations, private businesses, and other interested parties for the expansion of telehealth capabilities and the provision of telehealth services to veterans through the award of grants.

VA understands that veterans who live in rural and highly rural areas may not have reliable internet access. Also, veterans who live in medically underserved areas may not have accessible health care facilities within their communities. Thus, VA has developed a telehealth program as a modern, veteran-, beneficiary- and family-centered health care delivery model that leverages information and telecommunication technologies to connect patients with health care providers, irrespective of the State or location within a State where the health care professional or the patient is physically located at the time the health care is provided. The telehealth access points use a secure video application to bridge the digital divide by providing veterans health care service via telehealth in a fixed, secure environment with a reliable internet connection. These telehealth access points allow veterans to receive telehealth services closer to their residence without the inconvenience of having long travel times to their nearest VA medical facility to receive health care, particularly when veterans may lack appropriate internet access in their home. The convenience of the telehealth access point also allows veterans to be more engaged in their health care, which results in a more positive health outcome.

Section 701(b)(1) of the Act requires VA to award grants to entities in carrying out agreements entered into or expanded under this section with eligible entities. Section 701(b)(2) of the