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To: John F. Morrall III/OMB/EOP@EOP

cc: See the distribution list at the bottom of this message

Subject: Recommendations for Regulatory Reform: Draft Report to Congress on the Costs and Benefits of Federal Regulations, Chapter IV

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In accordance with my previous coordination with Mr. Shapiro, attached are the Recommendations of the State of Wisconsin Department of Transportation for Regulatory Reform approved by Secretary of Transportation Tom Carlsen's in his official letter of transmittal. There are 12 specific recommendations:

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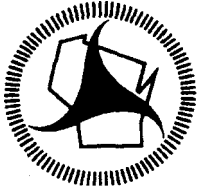


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May 28, 2002

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RE: Draft Report to Congress on the Costs and Benefits of Federal Regulations

Dear Mr. Morrall:

In response to the Office of Management and Budget's notice published in the March 28, 2002 Federal Register, the Wisconsin Department of Transportation (WisDOT) submits the following specific suggestions to be considered for regulatory reform.

### Department of Transportation Regulations

DBE Regulations – Data Collection Excessive

DBE Program – Excessive Regulation and Conflicting Program and Paper Work by FAA, FTA and FHWA

### Federal Highway Administration Regulations

Section 106 Process for Historic Properties [Advisory Council on Historic Preservation] and Inconsistent, Overlapping USDOT/FHWA 4(9) Process

Smaller Local Government (City and County) Let Programs -- Federal Contract Requirements – Too Burdensome

Annual Vehicle Size and Weight Certification and Enforcement Plan – Not Synchronized

Outdoor Advertising Control – Nonconforming Signs Improperly Perpetuated

Federal Transit Administration Regulations

Amend FTA Buy America Pre-Award and Post Delivery Certification Requirements

Repeal Funding Set-Aside for Intercity Bus – No Flexibility

National Highway Traffic Safety Administration Regulation

.08 Alcohol Incentive Program – May Impose Criteria Not in Regulation – Counterproductive

Department of Labor Regulation

Fair Labor Standards Act (FLSA) – Clarify Administrative Exception

Department of Justice Regulation

Driver's Privacy Protection Act (DPPA) – No Regulation – Inconsistent and Dysfunctional

Department of Interior/ National Park Service Regulation

Wild and Scenic Rivers Act Conflicts With Historic Preservation Act -- No Environmental Streamlining – National Park Service has no regulation and stopped project previously approved in Record of Decision by USDOT/FHWA

WisDOT appreciates the opportunity to work with the federal government agencies to help improve and increase net benefits to the public. If you have any questions, please feel free to contact the individuals listed on each suggestion directly.

Sincerely,



Thomas E. Carlsen, P.E.  
Acting Secretary

Attachment

## OFFICE OF MANAGEMENT AND BUDGET

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### **SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Name of Regulation:** Disadvantaged Business Enterprise (DBE) Program – Excessive Data Requirements

**Regulating Agency:** USDOT – FHWA, FTA, and **FAA**

**Citation: (e.g., CFR):** 49 CFR 26.37(b); 11(c); 55(h) and 81; 26.11, 26.45

**Authority: (e.g., Statute):** Section 1101(b)(1) and (6), P.L. 105-178 [TEA-21 for FHWA and FTA]; 49 USC 47107 and 47113 [for **FAA**]

### **Description of Problem: (Harmful impact and on whom)**

TEA 21 and 49 CFR Part 26 placed a major requirement on state transportation departments to collect, store, analyze and report on the contract participation activities and characteristics of both prime and subcontractors. Although the intention is to assist a national analysis on the impacts of new DBE regulations on contracting opportunities, the information requirements far exceed the types of data states have historically collected. In addition, some of the data, such as reporting on unsuccessful bids or quotes by firms, go well beyond what state agencies would actually need to plan balanced goals for DBE participation across and within a federal fiscal year. State transportation agencies are logically asked to make greater use of data technology. But tracking trends and patterns in contracting requires sophisticated software. Some of these software solutions are emerging. We suggest the need for more selective, data-modeled, and system linked approaches that ease some of the administrative and cost burdens on agencies and contractors alike.

To illustrate the range of newly required data and information, we have created the following table. The table is being used to support an information technology project request. It is estimated that WisDOT has accumulated only about 30% of the required data elements; some of which affect all contractors. The most problematic are **highlighted in bold**.

<b>New Requirements What We Need</b>	<b>DATA LOCATION/OWNER</b>	<b>ACTION BY/VIA PROCESS CHANGE or NEW SOFTWARE SOLUTION IF NEEDED</b>
Successful Prime Contractors and Subcontractors	TRNSPORTLAS & CAS /BOHC	DOT
Unsuccessful Prime Contractors and Subcontractors	TRNSPORTLAS/BOHC	DOT
Successful Prime Consultants and Sub-consultants	Consultant Data Base/BFS	DOT
Unsuccessful Prime Consultants and Sub-consultants	Consultant Data Base/BFS	DOT
Annual Gross Receipts 1. Prime 2. DBE 3. Non-DBE Subs/ Suppliers	LTD TO NO INFO/BOHC Project Tracking/ODBEP NO INFO	CONTRACTOWPROCESS DOT CONTRACTOWSOFTWARE
Prime Firm Age	NO INFO	CONTRACTORPROCESS
DBE Firm Age	Project Tracking/ODBEP	DOT
Non-DBE Subs/Suppliers Firm Age	NO INFO	CONTRACTOWSOFTWARE
Prime Personal Net Worth	NO INFO	CONTRACTOR/PROCESS
DBE's Personal Net Worth	Project Tracking/ODBEP	DOT
Non-DBE Subs/Suppliers PNW	NO INFO	CONTRACTOWSOFTWARE
Total Number of Certified DBE Firms	Project Tracking/ODBEP	DOT
Prime Contracts Amount of Awards, participation rate	TRNSPORTLAS & CAS /BOHC	DOT
Sub-Contracts Amount of Awards	Project Tracking/ODBEP	DOT
DBE's who did not receive contracts, graduation rate	NO INFO	CONTRACTOWSOFTWARE
DBE's who did receive contracts	Project Tracking/ODBEP	DOT
Overall cost of Administering DBE Program	LTD INFO....FOS?	DOT-ANALYSIS NEEDED
Discrimination against DBE's	NO INFO	DOT-ANALYSIS TOOLS NEEDED.
<b>Factors limiting DBE's</b>	NO INFO	DOT-ANALYSIS NEEDED
Discrimination against DBES in Public & Private Financial Markets Credit Markets Insurance Markets Bond Markets	NO INFO	DOT—ANALYSIS NEEDED.
Impact on DBE's of Court Orders	NO INFO	DOT-ANALYSIS NEEDED.
Actual Payments to All Subs	VERY LTD TO NO INFO	CONTRACTOR/SOFTWARE.
Impact of Job	NO INFO	DOT-ANALYSIS NEEDED.
Impact of Job Creation	NO INFO	DOT-ANALYSIS NEEDED.

### **Proposed Solution: (Both the fix and the procedure to fix it)**

Relieve States from burdensome federal mandates regarding civil rights data collection, assessment, and reporting requirements concerning primes and subcontractors. Specifically, eliminate, defer or adjust the cycle times or frequencies of the most difficult and problematic to accomplish data elements **bolded in the above chart**. In particular, establish a model system that minimizes variation across the States, and maximizes the use of existing state and federal funding. Require Comptroller General to assume the data collection and analysis burden imposed by Section 1101(b)(6), P.L. 105-178, TEA-21, rather than passing this burden on to the States through these regulations.

### **Estimate of Economic Impacts: (Quantified benefits and costs if possible)**

Preliminary estimates indicate that the cost to develop the tracking and reporting system necessary to comply with these regulations could be about \$500,000 for the public sector alone. The financial costs we incur to comply with the stated requirements include systems development, integration or procurement. In addition, there will be ongoing staff costs for systems operations, and for data gathering, analysis, reporting and management. Estimates for ongoing costs to maintain the system are not yet available.

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### **SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Name of Regulation:** DBE Program – Excessive and Conflicting Paper Work

**Regulating Agency:** USDOT – FHWA, FTA, and FAA

**Citation: (e.g., CFR):** 49 CFR Part 26

**Authority: (e.g., Statute):** Section 1101(b)(1) and (4), P.L. 105-178 [TEA-21 for FHWA and FTA]; 49 USC 47107 and 47113 [for FAA]

#### **Description of Problem: (Harmful impact and on whom)**

There is entirely too much paperwork and inconsistency in FHWA, FTA, and FAA insistence on their own annual and separate goal setting justifications. For example, FHWA requires a statewide annual goal. All FHWA funds flow through Wisconsin DOT. FAA, however, has insisted upon a separate annual goal for each air carrier airport in Wisconsin even though all FAA funds also flow through Wisconsin DOT and despite the fact that FAA changed eligibility rules retroactively during the year. Although there may be some justification for separate goals for concessionaires in each airport, there is no reason for separate project goals at each airport, particularly when most air carrier airports in Wisconsin only have one or two federally funded contracts each year. Furthermore, despite the attempt at uniformity in goal setting and reporting mandated by Congress and the regulations, FHWA, FTA, and FAA still all have separate annual reporting forms that differ and that do not comply with the regulation.

#### **Proposed Solution: (Both the fix and the procedure to fix it)**

1. WISDOT requests USDOT to prepare a new, uniform DBE achievement reporting form and obtain OMB Paper Work Reduction Act approval for the form and procedure to comply with the this DBE regulation. This is required by 44 USC 3501 and 5 CFR Part 1320.
2. WISDOT requests USDOT to amend its regulation (1) to clarify what firms are to be included in the "Bidders List," (2) to eliminate the requirement for annual gross receipts information, or (3) explain what purpose the "annual gross receipts" information serves and expressly protect this proprietary business information."

3. WISDOT requests elimination of the actual payment requirement; WISDOT has no system of obtaining a real-time, running tally of actual payments made to all DBE subcontractors and suppliers and cannot afford to implement such a system.
4. WISDOT requests USDOT abandon its new trucking counting regulation; it has resulted in harm to the DBE industry.
5. WISDOT is in charge of Wisconsin's Unified Certification Program in compliance with 49 CFR 26.81. WISDOT requested USDOT to amend or clarify the provision in the regulation that requires all recipients in Wisconsin to "sign an agreement establishing the UCP" for Wisconsin and to "submit the agreement to the Secretary of USDOT for approval." There should be additional, more reasonable alternative mechanisms. There are about 1,920 units of government in Wisconsin that receive transportation aids from WISDOT. Moreover, despite the fact that the regulations say that the Unified Certification Program may take any form acceptable to the recipients in that state, 49 CFR 26.81(3), USDOT has embellished its review process by remanding for rework almost all State programs submitted to date. The deadline for submission was March 2002.
6. Eliminate race and gender presumptions and create a program that encourages development of small businesses and entry into and competition within the transportation construction and consultant industry.

#### **Estimate of Economic Impacts: (Quantified benefits and costs if possible)**

There is no requirement in the federal statutes for imposing rigorous and contradictory race and gender conscious mechanisms on the States or their citizens and residents. The federal statutory language is simply:

TEA – 21, Act June 9, 1998, P. L. 105-178, Title I, Subtitle A, § 1101(b), 112 Stat. 113: "(1) General rule. **Except to the extent that the Secretary determines otherwise**, not less than 10 percent of the amounts made available for any program under titles I, III, and V of this Act [for full classification, consult USCS Tables volumes] shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals."

49 USC 47113 (b) "General requirement. **Except to the extent the Secretary decides otherwise**, at least 10 percent of amounts available in a fiscal year under section 48103 of this title shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals..."

These are regulatory matters under USDOT jurisdiction, not statutory directions. WISDOT and Wisconsin law generally adhere to the principle that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to all the rights and freedoms, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The imposition by these federal rules of race and gender conscious mechanisms and presumptions limited to specific races and genders is inconsistent with these accepted principles of our nation.



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### **SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Names of Regulations:** 4(f) and 106; Historic Preservation Regulations- Inconsistent, Overlapping

**Regulating Agencies:** USDOT – FHWA and an Independent Agency - Advisory Council on Historic Preservation [Uncoordinated]

**Citation: (e.g., CFR):** 23 CFR Part 771.135 [Section 4(f) (49 U.S.C. 303)]; and 36 CFR Part 800 [PROTECTION OF HISTORIC PROPERTIES]

**Authority: (e.g., Statute):** 23 USC 138, 49 USC 303 [formerly 49 USC 1653(f), Section 4(f) of the Department of Transportation Act]; and 16 USC 470f [Section 106 of the National Historic Preservation Act of 1966]

### **Description of Problem: (Harmful impact and on whom)**

Inconsistent and uncoordinated overlap between 4(f) requirements and the Section 106 process for historic properties.

Section 106 and Section 4(f) overlap because they both protect properties listed on the National Register of Historic Places. Transportation agencies end up satisfying two sets of requirements—Section 106 & 4(f)—when a transportation project affects one of these historic properties, and this results in delays and duplicative analysis and reports. Non-transportation agencies only have to satisfy the requirements of Section 106.

### **Proposed Solution: (Both the fix and the procedure to fix it)**

Legislatively eliminate historic properties from Section 4(f) or change federal regulation, 23 CFR 771.135, to allow compliance with Section 106 to satisfy Section 4(f), for properties on the National Register of Historic Places.

### **Estimate of Economic Impacts: (Quantified benefits and costs if possible)**

Costs are related to project delays. Most transportation designers will do anything to avoid a 4(f) designation, so we rarely see the delays. What we do see is poor decisions, based on avoiding the historic resource, that result in the loss of other resources. In addition, there is no guaranteed long-term protection for a privately owned historic resource; and we often find that after meeting the requirements of both laws, minimizing harm and most likely avoiding the site, it *is* razed by the owner.

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### **SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Name of Regulation:** Numerous Mandatory Contract Requirements for Minor federally-funded Transportation Projects: See:

<http://www.fhwa.dot.gov/programadmin/contracts/tabover.htm>

**Regulating Agency:** USDOT/FHWA

**Citation: (e.g., CFR):** See above and also:

<http://www.fhwa.dot.gov/novl/programadmin/contracts/coretochtm>

**Authority: (e.g., Statute)** Federal Highway Administration. An example of typical program for small projects let by local units of government is the one funded with federal transportation enhancement funds provided under 23 USC 133(b)(8) and (d)(2) as defined in 23 USC 101(a)(35).

### **Description of Problem: (Harmful impact and on whom)**

Local enhancement projects have high administration costs and require extensive state oversight simply to inform local personnel of federal contract requirements. Federal funding requirements are geared to large highway construction projects, not these smaller non-highway projects. Most of the time, typical highway development rules don't fit these projects and even the reduced requirements for these projects are excessively burdensome and confusing.

### **Proposed Solution: (Both the fix and the procedure to fix it)**

Implement a grant program for locals to administer what would significantly reduce costs and the amount of oversight. Maybe the solution is (1) to authorize USDOT/FHWA to approve alternative state or local processes/provisions if considered sufficiently similar to federal requirements, or (2) substantially increase the \$ amount required before all the federal mandatory contract requirements apply, or (3) simply exempt the transportation enhancements, congestion mitigation and air quality and similar programs from most of the standard federal contract requirements as long as they don't exceed a certain \$ amount, or (4) all of the above.

**Estimate of Economic Impacts: (Quantified benefits and costs if possible)**

Would greatly reduce staff time and administrative costs. Compliance is already inconsistent due to lack of local familiarity with extensive federal contract requirements for this type of work.

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### **SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Name of Regulation:**

**Regulating Agency:** USDOT - FHWA

**Citation: (e.g., CFR):** 23 CFR 657.11 (Enforcement plan July 1); 23 CFR 657.13 (Certification January 1)

**Authority: (e.g., Statute):** 23 U.S.C. 127, 141, and 315; 49 U.S.C. 31111, 31113, and 31114

**Description of Problem: (Harmful impact and on whom)**

The submission date for the vehicle size and weight enforcement plan is out of synchronization with the annual size and weight compliance certification date. In addition, the timing of FHWA's acceptance and return of comments on the certification and plan have not been predictable, nor received at a time to have a meaningful effect on the content of the next subsequent enforcement plan. For example, the FHWA acceptance and comments on FFY 1999 Size/Weight Certification may be received by the State in September, 2000 and have no effect whatsoever on the State's FFY 2001 Enforcement Plan submitted around July 1.

**Proposed Solution: (Both the fix and the procedure to fix it)**

FHWA should prepare and deliver comments on annual size and weight certification by March 1 each year in order to include action based on comments in the enforcement plan that it submits around July to August. Further recommend consolidated submission of the enforcement plan and certification on the same date.

**Estimate of Economic Impacts: (Quantified benefits and costs if possible)**

Make practical use of federal comments rather than engage in a paper exercise. Enhanced compliance.

## OFFICE OF MANAGEMENT AND BUDGET

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### **SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Name of Regulation:** Outdoor Advertising Control – Nonconforming Signs Improperly Perpetuated.

**Regulating Agency:** USDOT - FHWA

**Citation: (e.g., CFR):** 23 CFR 750.707 (c), (d) and (e)

**Authority: (e.g., Statute):** 23 USC 131

### **Description of Problem: (Harmful impact and on whom)**

Wisconsin enacted conforming legislation to the federal Highway Beautification Act that created a class of nonconforming signs in 1972. Other nonconforming signs have come into existence over the years due to changes in highway designations, zoning and other business location changes. The statutory purpose of this law is to control the erection **and maintenance** of outdoor advertising signs, displays, and devices in areas adjacent to certain highways in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty. It has had the opposite effect. It has prohibited States and local units of government from requiring removal of nonconforming signs after a period of time. Federal law requires payment for removal of the signs regardless of how old or how long they have been nonconforming. It has “fenced in” the existing industry and kept out competition.

The federal law allows these nonconforming signs to continue to exist for the remainder of their normal structural life with reasonable maintenance, but not perpetually. However, it provides no mechanism for establishing that normal life expectancy. The legislative intent is that nonconforming signs disappear over time. It has not happened.

### **Proposed Solution: (Both the fix and the procedure to fix it)**

Amend 23 CFR 750.707 (c), (d) and (e) so that the regulation clearly spells out what is the “duration of its normal life” of a nonconforming sign “subject to

customary maintenance.” Customary or reasonable maintenance should not include replacing wood posts with steel posts, or raising the height of the sign, or enlarging a sign. The regulation should spell out what it means for a nonconforming sign to remain substantially the same as they were before the maintenance or repair. The regulation should state that cumulative reasonable repair or maintenance of a sign cannot exceed 50% of the replacement costs of the same. To make that calculation, the actual repair or maintenance cost for the sign should be divided by the actual replacement cost for the same sign. The regulation should be amended to set a deadline date of no more than say 5 or 10 years for the continued existence of any nonconforming sign. When it loses its nonconforming status the sign the regulation should state the sign is no longer lawful and must be removed at the sole expense of the sign owner. A new sign cannot be erected in its place. And if any public agency acquires the property on which the sign is located, the sign is illegal and no compensation may be paid for the sign.

**Estimate of Economic Impacts: (Quantified benefits and costs if possible).**

Would achieve the goals of the Highway Beautification Act. It would save expenditures of public funds to acquire nonconforming signs, would protect the funds needed and used for public investment in such highways, would promote the safety and recreational value of public travel, and would preserve natural beauty. Would allow fair competition and not give a geographic monopoly to the owners of nonconforming signs that presently continue long beyond any normal expected structural life -- perhaps perpetually.

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### **SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Name of Regulation:** Amend FTA Buy America Requirements

**Regulating Agency:** USDOT – Federal Transit Administration

**Citation: (e.g., CFR):** 49 CFR 663.13, 663.25 (Pre-Award), and 663.35 (Post-Delivery)  
and see also Part 661

**Authority: (e.g., Statute):** 49 USC 5323(j) and (m)

### **Description of Problem: (Harmful impact and on whom)**

The Federal Transit Administration currently requires that each grantee procuring transit vehicles undertake a dual certification and audit process (both pre-award and post-delivery) to assure that Buy America requirements are met when vehicles are purchased. This dual certification and review process represents administrative redundancy for every grantee for every vehicle procurement effort. With upwards of 6,000 transit agencies across the country as well as many states involved in vehicle procurements, this dual process is repeated by every grantee every time a separate bid process is undertaken. This is an excessive, prescriptive, process-laden mandate where the costs of redundancy clearly outweigh the benefits. The current requirements also place an excessive administrative burden on manufacturers.

### **Proposed Solution: (Both the fix and the procedure to fix it)**

One option is for manufacturers to self-certify that Buy America requirements are being met. Manufacturers could self-certify that specific vehicle makes and models comply with Buy America requirements, similar to other widely used self-certification processes. It is recommended that the Federal Transit Administration's Buy America requirements be streamlined and made less costly and burdensome by allowing manufacturers to self-certify to FTA that specific vehicle makes and models meet Buy America requirements.

**Estimate of Economic Impacts: (Quantified benefits and costs if possible):** ? Large



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### **SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Name of Regulation:** Repeal Funding Set-Aside for Intercity Bus

**Regulating Agency:** USDOT – Federal Transit Administration

**Citation: (e.g., CFR)** None Found.

**Authority: (e.g., Statute):** 49 USC 5311(f)

#### **Description of Problem: (Harmful impact and on whom)**

Significant public transit needs exist in non-urbanized areas of Wisconsin and other States. A mandatory federal set-aside for an intercity bus program means less funding is available to meet other small urban and rural transit needs. This translates into less discretion and flexibility in addressing projects of local priority and significance. Since 1994, the Federal Transit Act has required that 15% of the annual formula allocation under the Non-urbanized Area FTA grant program be spent on intercity bus needs. The set-aside requirement is effective unless the Governor certifies that all intercity needs in the state are being adequately met.

#### **Proposed Solution: (Both the fix and the procedure to fix it)**

Intercity bus service should remain an eligible use of FTA non-urbanized area funds. But to prescribe a guaranteed set-aside of program funding specifically for intercity bus service erodes State's ability to maximize the use of these funds in the most effective manner. It is recommended that 49 USC Section 5311(f) be repealed, thus eliminating the required 15% set-aside for intercity bus funding thereby allowing States to determine individually the most effective and efficient use of non-urbanized area funds.

**Estimate of Economic Impacts: (Quantified benefits and costs if possible):** ?

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### SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:

**Name of Regulation:** .08 Alcohol Incentive Program -- Not in Regulation – Counter Productive  
**Regulating Agency:** USDOT - NHTSA

**Citation: (e.g., CFR):** 23 CFR Part 1225; July 1, 1999 Federal Register, page 35570

**Authority: (e.g., Statute):** 23 USC 163 [H.R. 4475 of the 106th Congress became the Annual Appropriations Act for Transportation for the fiscal year ending September 30th, 2001. Section 101 (a) of this Act enacted into law the provisions of H.R.5394 of the 106th Congress. Section 351 of H.R. 5394. In Section 351 the Secretary of USDOT is directed to use the criteria in section 163(a) of title 23, U.S. Code to determine if a state has enacted and is enforcing a .08 law. Section 163 23 U.S. Code is interpreted at 23 CFR Part 1225.

#### **Description of Problem: (Harmful impact and on whom)**

NHTSA appears to be applying the compliance criteria in the preamble in the July 1, 1999 Federal Register at page 35570, rather than the text of the regulation itself. The preamble language in the Federal Register quotes compliance criteria purportedly from an interim final rule rather than the final rule. Specifically, it states under the 5<sup>th</sup> compliance criteria:

“5. Both Criminal and ALR Laws. A State must establish a 0.08 BAC per se level **under its criminal code**. ....”

This does not appear in the rule text itself. This is the portion of the criteria that some Regional NHTSA personnel have identified as the provision that would require Wisconsin to criminalize 1st offense OWI. First offense OWI in Wisconsin is presently a civil forfeiture combined with mandatory assessment and treatment. Wisconsin achieves a very high level of conviction, mandatory assessment, and treatment programs under this civil code, as opposed to the criminal code. It avoids the cost of public defenders and criminal procedures and proof beyond a reasonable doubt to obtain a conviction. A crime in Wisconsin is one punishable by a fine rather than forfeiture. It would be inconsistent with the purposes of the law and national policy to insist on a “criminal code” provision that is not in the federal regulation.

**Proposed Solution: (Both the fix and the procedure to fix it)**

Do not require enactment of first offense .08 per se law as part of the Wisconsin criminal code. **NHTSA** simply needs to administer the rule differently than we are lead to believe it may.

**Estimate of Economic Impacts: (Quantified benefits and costs if possible)**

Reduction in number of persons killed and injured by drivers at .08 or above coupled with successful conviction, assessment, and treatment of first offenders. Depending on how quantified, the savings to courts, public defenders and human life is substantial.

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**SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Name of Regulation:** Fair Labor Standards Act – Clarify Administrative Exception

**Regulating Agency:** United States Department of Labor

**Citation: (e.g., CFR):** 29 CFR Part 541;

**Administrative Exemption:** Part 541, subpart B sections 541.201 thru 541.208

**Authority: (e.g., Statute):** The Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.)

**Description of Problem: (Harmful impact and on whom)**

The administrative exception language is difficult to interpret and use in the application of the standards. Additionally, the minimum salary language is outdated.

**Proposed Solution: (Both the fix and the procedure to fix it)**

Expand the explanation of administrative exception including examples particularly as it relates to "the performance of "office or nonmanual work directly related to management policies". Update the minimum salary language.

**Estimate of Economic Impacts: (Quantified benefits and costs if possible)**

This language is difficult to administer and difficult to explain to employees, managers and supervisors.

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### **SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Name of Regulation:** DPPA (Driver's Privacy Protection Act)

**Regulating Agency:** Department of Justice

**Citation: (e.g., CFR):** There are no implementing regulations and USDOJ does not respond to questions on interpretation posed by the Wisconsin Department of Transportation.

**Authority: (e.g., Statute):** 18 USC 2721-2725 (DPPA) [from Driver's Privacy Protection Act of 1994, P.L. 103-3221]

#### **Description of Problem: (Harmful impact and on whom)**

This Act was intended to protect the personal privacy and information of individuals who have motor vehicle records. It was far less restrictive than intended. It actually restricted "John Q. Citizen" from obtaining another person's record with personal information on it, but still allows motor vehicle crash record personal data to be obtained. Interpretation of the Act varies from state to state. Media in many states cannot get the records, but in Wisconsin we allow them to sign the DPPA form and check "highway safety"... and they can get the records. States have not received guidance from the Department of Justice on how to implement; therefore, we have various interpretations and practices.

#### **Proposed Solution: (Both the fix and the procedure to fix it)**

Tighten up the 13 exceptions ... remove towing and impounding authorities and private investigators. Require the Department of Justice to provide guidance to the States. The exceptions swallow the law.

#### **Estimate of Economic Impacts: (Quantified benefits and costs if possible)**

Has been a big financial burden to implement to most state DMV's. Wisconsin experienced an additional \$200,000 in staff time to implement and answer questions. This was using current staff time and in some cases overtime to handle forms, distributions, public contact, etc.

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### **SUGGESTION FOR REGULATORY REFORM IMPROVEMENTS:**

**Name of Regulation:** Wild and Scenic Rivers Act and Historic Preservation Act Conflict – No Environmental Streamlining

**Regulating Agency:** USDOJ/National Park Service and Advisory Council on Historic Preservation

**Citation: (e.g., CFR):** USDOJ/NPS has no regulations on the subject.

**Authority: (e.g., Statute):** 16 USC 1278(a) and 16 USC 470f

### **Description of Problem: (Harmful impact and on whom)**

A year and a half after the USDOT/FHWA Record of Decision, in December 27, 1996, the NPS issued a Section 7(a) determination indicating that the proposed project would adversely impact the scenic and recreational values protected by the Wild and Scenic Rivers Act. The project stopped after \$14 million was spent by the States of Minnesota and Wisconsin in reliance on the NEPA Record of Decision and after endangered species were moved, property acquired, buildings razed, utilities moved, and families and businesses relocated in reliance on these analyses and independent federal approvals to proceed. The approximately \$160 million bridge project across the St. Croix River of part of the National Highway System remains at an impasse due to the conflict between the historic interests – keep the old historic bridge – and the river interests – one bridge in, old bridge out.

### **Proposed Solution: (Both the fix and the procedure to fix it)**

Make sure States can rely on a Record of Decision under NEPA and resolve the conflicting historic and river goals by allowing the USDOT to make the final decision. USDOJ/National Park Service has yet to promulgate any implementing rules that resolve the historic and river interest conflicting goals.

**Estimate of Economic Impacts: (Quantified benefits and costs if possible): \$100s of Millions. It is also the obvious bypass/alternative route if the critical 1-94 Bridge connecting Minneapolis/St. Paul, MN and Wisconsin is damaged or destroyed.**