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CENTER FOR NUCLEAR WASTE REGULATORY ANALYSIS

TRIP REPORT

SUBJECT: Transportation and Systems Panel Public Hearing
(20-3702-072)

DATE AND PLACE: August 17, 1990, Amargosa Valley, Nevada

AUTHOR: John P. Hageman

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CENTER FOR NUCLEAR WASTE REGULATORY ANALYSIS

TRIP REPORT

SUBJECT: Transportation and Systems Panel Public Hearing
(20-3702-072)

AUTHOR: John P. Hageman

DATE/PLACE OF TRIP: August 17, 1990, Amargosa Valley, Nevada

PERSON PRESENT: John P. Hageman

BACKGROUND AND PURPOSE OF HEARING

This hearing discussed several aspects of high-level waste (HLW) transportation as related to the potential repository at Yucca Mountain. Prepared statements were given to present the latest available information regarding the issues and concerns of various parties on high-level waste transportation in Nevada.

SUMMARY OF PERTINENT POINTS

The panel wants to hear public concerns on transportation of HLW over the next six months. These issues discussed at this hearing included identification of transportation modes and routes as early as possible, transportation through rural areas, presenting risk statistics to the public, number of shipments, demonstration of cask safety to the public, and a comparison of county auto accidents to state accidents. The overall focus dealt with ways to improve public perception of high-level waste disposal and to ensure funding to carry out this task. The meeting was attended by 45 people, primarily from Nye County and Las Vegas. State Senator Virgil Getto, was invited to give the opening presentation. Alan Fisher of Consolidated Railroad was also invited by the panel as a speaker. Five of the 6 prepared presentations are attached along with the hearing attendance list.

IMPRESSIONS/CONCLUSIONS

During the presentations there was a free exchange of concepts concerning transportation of HLW between the panel and the presenters. The State of Nevada had the most prepared speaker and was asked by the panel to provide copies of the references cited in the prepared statement.

PROBLEMS ENCOUNTERED: NONE.

PENDING ACTIONS: NONE.

SIGNATURE

*Allen R. Whiting for
John P. Hageman*

9/10/90

Date

CONCURRENCE

Allen R. Whiting

Allen R. Whiting
Director, WSE&I

9/11/90

Date

NYE COUNTY, NEVADA

**PRESENTATION TO
THE NUCLEAR WASTE TECHNICAL REVIEW BOARD**

426-1

**STEPHEN T. BRADHURST,
Nye County Planning Consultant**

**August 17, 1990
Amargosa Valley, Nevada**

INTRODUCTION

- **WELCOME TO NYE COUNTY**

- **PURPOSE OF PRESENTATION**
 - **ORIENT NWTRB TO NYE COUNTY NUCLEAR WASTE REPOSITORY PROGRAM**
 1. **HISTORY**
 2. **ORGANIZATION AND PROGRAM OF WORK**

 - **NOTE SIGNIFICANCE OF NWTRB TO NYE COUNTY**

 - **RECOMMEND SOCIOECONOMICS AS A "SCIENCE" WHICH SHOULD BE REPRESENTED ON NWTRB**

 - **CONVEY GENERAL TRANSPORTATION ISSUES OF CONCERN**

NYE COUNTY NUCLEAR WASTE REPOSITORY PROGRAM

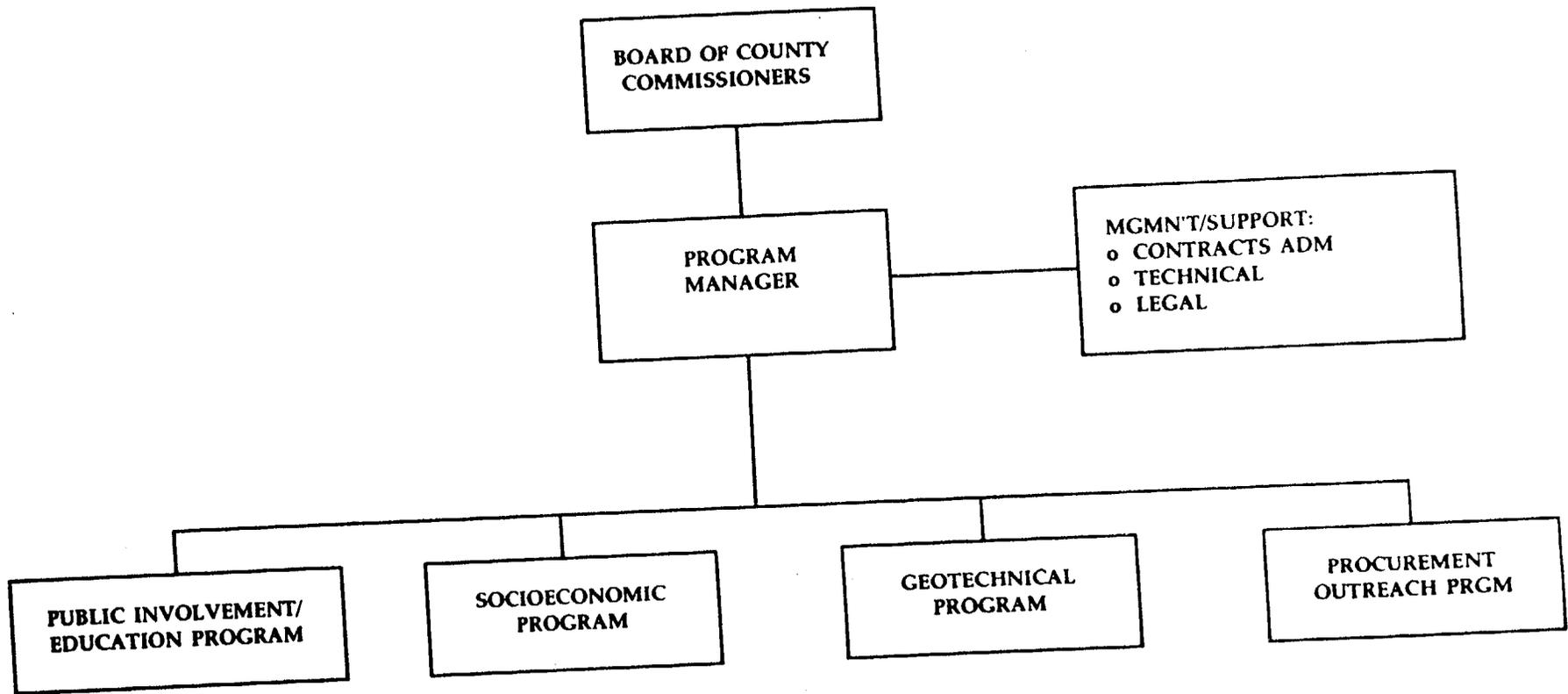
● HISTORY

- COUNTY BEGAN ACTIVE INVOLVEMENT IN REPOSITORY ISSUES IN 1983 (NWPA)**
- ORIGINAL FUNDING THROUGH STATE OF NEVADA**
- SOUGHT AND RECEIVED STATUS AS "SITUS" LOCAL GOVERNMENT (NWPAA)**
 - 1. MOST DIRECTLY IMPACTED**
 - 2. INDEPENDENT FUNDING FOR MONITORING AND EVALUATING DOE PROGRAM AND FOR PURSUING APPROPRIATE MITIGATION OF IMPACTS**
 - 3. ON-SITE REPRESENTATION**
- TECHNICAL FOCUS HAS BEEN ON SOCIOECONOMICS; HAVE RELIED ON STATE'S GEOTECHNICAL OVERSIGHT**

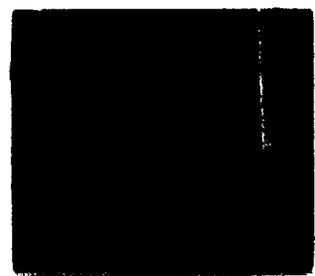
NYE COUNTY NUCLEAR WASTE REPOSITORY PROGRAM (CON'T)

- **NYE COUNTY PROGRAM TO ENSURE THAT:**
 - **PUBLIC HEALTH AND SAFETY ARE FULLY PROTECTED**
 - **VALUED NATURAL RESOURCES ARE NOT DEGRADED**
 - **ADVERSE IMPACTS ON COUNTY AND RESIDENTS ARE MINIMIZED**
 - **UNAVOIDABLE IMPACTS ARE MITIGATED**
 - **POSITIVE PROGRAM IMPACTS ARE MAXIMIZED**
 - **RESIDENTS ARE KEPT FULLY INFORMED AND INVOLVED**

- **ORGANIZATION (see Table of Organization)**
 - **POLICY DIRECTION PROVIDED BY NYE COUNTY BOARD OF COUNTY COMMISSIONERS**
 - **PROGRAM POLICY IMPLEMENTED BY PROGRAM MANAGER AND STAFF**



Nye County:08/14/90



NYE COUNTY NUCLEAR WASTE REPOSITORY PROGRAM (CON'T)

- **NYE COUNTY PROGRAM OF WORK**

- **NYE COUNTY HAS MONITORED DOE ACTIVITY THROUGH DOCUMENT REVIEW, MEETING ATTENDANCE (E.G., NRC, ACNW AND NWTRB) AND DIRECT PARTICIPATION (E.G., NRC-INITIATED LSS NEGOTIATED RULEMAKING).**
- **HISTORICALLY, PROGRAM DEVELOPMENT PRIORITY HAS BEEN GIVEN TO SOCIOECONOMIC MONITORING AND ASSESSMENT**
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 3. **GROWTH MANAGEMENT STUDIES**
 4. **MANAGEMENT INFORMATION SYSTEM DEVELOPMENT, INCLUDING MAPPING**
- **INCREASED EMPHASIS TO BE PLACED ON TRANSPORTATION, GEOTECHNICAL ISSUES (SURFACE-BASED TESTING PRIORITIES AND ESF), RADIOLOGICAL HEALTH MONITORING AND PREPARATION FOR LICENSING**

NYE COUNTY NUCLEAR WASTE REPOSITORY PROGRAM (CON'T)

- **NYE COUNTY PROGRAM OF WORK (con't)**
 - **OTHER AREAS INCLUDE DOCUMENTING NYE COUNTY HISTORICAL AND CULTURAL DEVELOPMENT AND DEVELOPING A CONCEPTUAL PLAN FOR A SCIENCE CENTER**
 - **PROGRAM FUNDED THROUGH THE NUCLEAR WASTE FUND BY ANNUAL APPROPRIATION AND DOE FINANCIAL ASSISTANCE GRANT PROCESS**

SIGNIFICANCE OF NWTRB TO NYE COUNTY

- **INDEPENDENT OVERSIGHT, REPORTING DIRECTLY TO CONGRESS**
 - **NOT RESPONSIBLE FOR SITING, DEVELOPING AND OPERATING A REPOSITORY**
 - **NOT RESPONSIBLE FOR LICENSING THE REPOSITORY**
 - **RESPONSIBLE FOR EVALUATING "THE TECHNICAL AND SCIENTIFIC VALIDITY" OF ACTIVITIES UNDERTAKEN BY DOE**
- **TECHNICALLY AND SCIENTIFICALLY COMPETENT**
- **JUDGEMENT CARRIES WEIGHT AND INFLUENCE**

**NWTRB IS ENCOURAGED TO BROADEN EMPHASIS BEYOND
GEOTECHNICAL AND ENGINEERING**

- **BROADEN ENVIRONMENTAL FOCUS TO INCLUDE SOCIOECONOMICS**
 - **SOCIOECONOMICS IS, IN FACT, A TECHNICAL/SCIENTIFIC DISCIPLINE THAT MEETS STATUTORY DEFINITION OF ROLE FOR NWTRB**
 - **SOCIOECONOMIC MONITORING AND ASSESSMENT WILL ULTIMATELY LEAD TO MITIGATION REQUIREMENTS**
 - **THE RADIOLOGICAL MONITORING PROGRAM HAS SIGNIFICANT SOCIOECONOMIC ELEMENTS, AS WELL AS HEALTH AND SAFETY IMPLICATIONS.**

GENERAL TRANSPORTATION ISSUES OF CONCERN

- **QUALITY OF TRANSPORTATION CASKS SHOULD BE DEMONSTRABLE TO COUNTY**
- **SAFETY CONSIDERATIONS SHOULD BE GIVEN HIGHEST PRIORITY IN SITING AND ENGINEERING HIGHWAY AND RAIL CORRIDORS**
- **RISK ANALYSIS MUST GO BEYOND PROBABILISTIC RISK ASSESSMENT**
 - **RISK ANALYSIS MUST INCLUDE JUDGEMENTS OF LOCAL PUBLIC OFFICIALS AND GENERAL PUBLIC; NOT ONLY "TECHNICAL EXPERTS"**
 - **RISK COMMUNICATION MUST OCCUR AS A "TWO WAY" PROCESS**
- **ALL STUDIES SHOULD BE COORDINATED WITH COUNTY; WHERE APPROPRIATE, COUNTY DATA SHOULD BE THE REFERENCE DATA FOR EVALUATION OF POTENTIAL IMPACTS**
- **POSITIVE IMPACTS OF RAIL LINES SHOULD BE MAXIMIZED**

TESTIMONY
OF
DENNIS BECHTEL, COORDINATOR
CLARK COUNTY NUCLEAR WASTE REPOSITORY PROGRAM
OF CLARK COUNTY, NEVADA

BEFORE THE
UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD

AMARGOSA VALLEY,
NEVADA
AUGUST 17, 1990

My name is Dennis A. Bechtel. I am Planning Coordinator for the Nuclear Waste Repository Program (NWRP) for Clark County, Nevada. For the record our address is 225 Bridger Avenue, Las Vegas, Nevada. On behalf of the NWRP, I would like to welcome you to Nevada and thank you for providing the opportunity to voice our concerns. Before I begin, I would like to share Commissioner Thalia Dondero's regrets for not being able to speak here today. Commissioner Dondero is a member of Governor Miller's Commission on Nuclear Projects and is greatly concerned with nuclear waste issues especially as they relate to transportation. She had a prior commitment that precluded her presence. She sends her regards.

I am here today to describe the Clark County Nuclear Waste Repository Program (NWRP) to the Nuclear Waste Technical Review Board (NWTB) and to identify some of Clark County's concerns relating to the transport of nuclear waste to the proposed high-level nuclear waste repository at Yucca Mountain.

In its attempt to adequately address the problem of permanent and safe storage for high-level nuclear waste, Congress enacted the Nuclear Waste Policy Act of 1982. In 1987, Congress enacted Public Law 100-203, the Nuclear Waste Policy Amendments. The Texas and Washington sites were eliminated from consideration, and the Department of Energy (DOE) was authorized to only study the site in Nye County, Nevada, known as Yucca Mountain.

Until 1987, Clark County was an integral part of the State of Nevada's Yucca Mountain program. There were only finite resources to perform the needed socioeconomic studies, however, (of which transportation is an important component). This issue was addressed late in 1987 when Congress approved Public Law 100-203, the Nuclear Waste Policy Amendments Act of 1987 (the NWPA).

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The NWPAA provided the opportunity for "affected units of local government" to participate directly in activities related to the determination of suitability of the Yucca Mountain site and to evaluate impacts on communities from the proposed repository. On April 21, 1988, the Department of Energy designated Clark, Lincoln and Nye Counties as affected units of local government.

It is from the perspective as an affected unit of local government that I would like to address you today. We believe that this public hearing provides the appropriate forum to convey Clark County's concerns specific to the Department of Energy, its high-level nuclear waste program and the role of the County in the future examinations of Yucca Mountain. I hope today, to broaden your understanding of Clark County and how this program affects the community. The following reflects these points and offers some possible solutions.

1. THE CLARK COUNTY GROWTH FACTOR

Clark County is currently experiencing a major in-migration of people, and has been for the past several decades. Current population estimates indicate that approximately 760,000 people reside in Clark County (approximately 65% of Nevada's population resides in Clark County), with 96% living within the Las Vegas Metropolitan area. Currently, 4000 people are moving into the county each month. This represents the highest growth rate in the United States. Even when gauged by conservative estimates, population growth is expected to continue throughout the 1990s. Growth has outstripped government's capacity to provide basic services such as schools, water, sanitation and police and fire protection. The conditions of rapid growth make for an unique planning environment. Since the County has marginal supplies of resources, any external variable, such as, the introduction of a high-level waste repository with the potential addition of thousands of employees and their families, may impact Clark County's ability to provide basic services. [It should be noted that many Nevada Test Site workers reside in Clark County].

How we resolve these issues is of vital importance to the welfare of Clark County. One of the foremost goals of our elected officials and their staff is to ensure that the high standards of the quality of life remains intact. An important component of this is the continued health and vitality of our economy, which is tourist-based. We must, therefore, structure planning goals to incorporate strategies that maintain a positive national image. As with any governmental approach to dealing with issues, we must be able to have substantive input into the process and thus guide development.

Further, each community has its own individual characteristics. Las Vegas and Nevada have unique circumstances that local planners and engineers must wrestle with daily. We are consequently best equipped to develop a program to determine where potential impacts will occur. This is particularly the case with transportation. Fortunately, as we interpret the amendments, there is sufficient flexibility to enable all parties to define their own study requirements.

RECOMMENDATION

In light of these facts, and due to our unique circumstances, our recommendation is that Clark County and other affected units of local government must be allowed independence when defining studies related to the examination of repository related impacts. The issues defined through independent study reflect the County government's awareness where emphasis in research would best be placed in order to determine accurate baseline scenarios, information needs and ultimately determine impacts.

2. TRANSPORTATION ISSUES IN CLARK COUNTY

An examination of a map of southern Nevada illustrates some of the inherent problems facing Clark County with respect to the shipment of spent nuclear fuel to the Yucca Mountain site.

First, there is a limited roadway network. This is in part due to geography. U.S. highways 93 and 95 and Interstate 15 are the only routes linking southern Nevada to Utah, California and Arizona, and these traverse the most densely populated areas of Las Vegas. Even assuming an MRS is constructed (which would reduce the overall shipping quantities), a large number of shipments will likely traverse Clark County. Further, because we do not have a bypass system, such as a beltway around the Las Vegas Metropolitan area we are concerned about waste shipments and the potential risks to the public.

Second, the mode of transportation of the high-level nuclear waste to the proposed site is currently unknown. The use of rail is an option which the Department of Energy is currently exploring. However, the use of rail would also pose risks to the citizens of Clark County because the only mainline rail route goes through downtown Las Vegas. Due to the existing alignment of mainline track currently servicing southern Nevada, a dedicated spur will have to be built from the mainline to repository site. Several of the proposed routes would pass through Clark County. This raises another series of issues that would have to be addressed including emergency response, impact on the environment and a host of other potential issues.

RECOMMENDATION

We recommend that the Department of Energy acknowledge that Clark County has a limited roadway network which could have serious consequences on the movement of high-level nuclear waste to the repository. The Department of Energy and the Department of Transportation, therefore, should permit flexibility in routing in order to take into consideration, unique circumstances that may affect citizens. Further, we agree that it is too early in the repository planning process to identify specific routes for both the County and the Department of Energy. It would, however, be prudent to assume that based on the existence of the current highway network and the Department of Transportation regulations, there is sufficient justification for continuing system wide analysis.

Because each community has sufficiently unique transportation characteristics, we also request that we be afforded a substantial degree of freedom when developing issues for transportation studies. Although the Regional Transportation Commission of Clark County is the designated MPO, the development of transportation studies emanates from the Clark County Nuclear Waste Repository Program. This system ensures that from the nuclear waste program perspective, our evaluatory efforts will have continuity when addressing nuclear waste issues.

3. THE DOE NUCLEAR WASTE PROGRAM

MRS FACILITY

The potential construction of a Monitored Retrievable Storage (MRS) facility may be an essential component of the proposed high-level nuclear waste repository. Without an MRS facility, that provides the potential for consolidating waste, the frequency of nuclear waste shipments represents a quantum increase in risk to the residents in Clark County. If an MRS were in place, using dedicated rail, there would be a total of 1,388 rail shipments, and 7,234 truck shipments. Without an MRS, there would be 7,879 rail casks to be shipped and 26,600 truck shipments. The worse-case, no MRS and no rail shipments would increase truck shipments to 76,000. The absolute risks to Clark County would dramatically increase without an MRS site in place prior to the operation of the proposed repository.

RECOMMENDATION

We want to strongly emphasize that the high-level nuclear waste program must include the MRS as a prerequisite to any planning efforts associated with Yucca Mountain. The MRS should include facilities to consolidate waste and thus reduce the total number of shipments to be transported. We would like to be kept apprised of all the issues relevant to the MRS siting efforts, and where possible, be involved in the planning process.

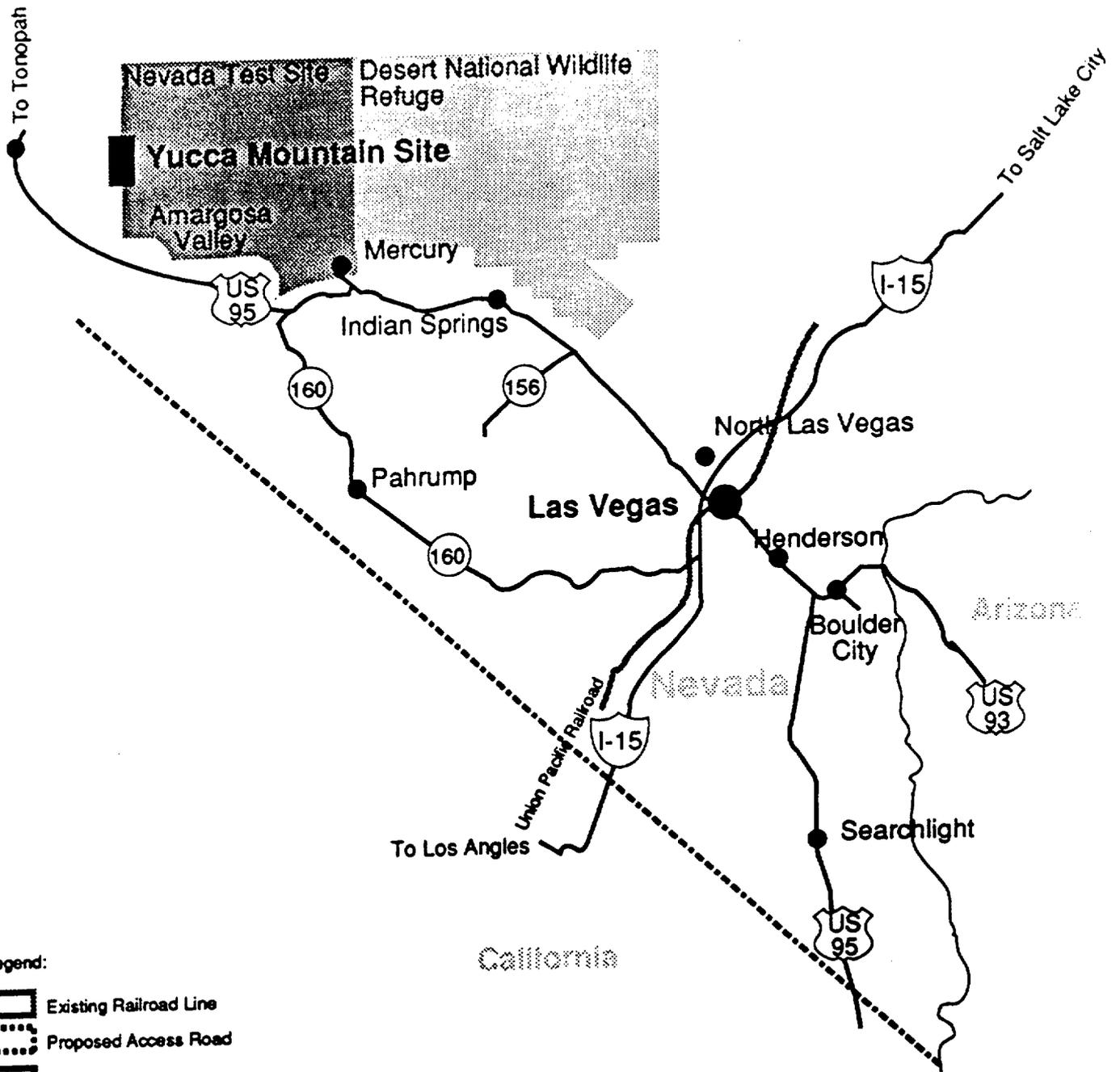
CONSISTENCY IN THE DEPARTMENT OF ENERGY'S (DOE) TRANSPORTATION POLICY

An issue which is important to Clark County is the Department of Energy's transportation policy relating to nuclear wastes. In the foreseeable future, shipments will begin to move throughout the United States highway system to the Waste Isolation Pilot Project (WIPP) near Carlsbad, New Mexico. The defense waste cleanup will also result in large volumes of waste being transported throughout the nation. Many of the issues which relate to the WIPP shipments, such as tracking systems, driver systems, safe havens, emergency stops, emergency response and weather routing would be particularly useful in the transportation planning for Yucca Mountain.

RECOMMENDATION

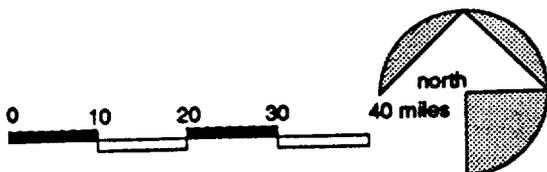
We believe that standardization of all the Department of Energy transportation policies and procedures would be beneficial to all local governments who are faced with front line issues. Standardization will improve the total transport of nuclear waste throughout the United States, and minimize duplicative efforts that might occur relevant to Yucca Mountain.

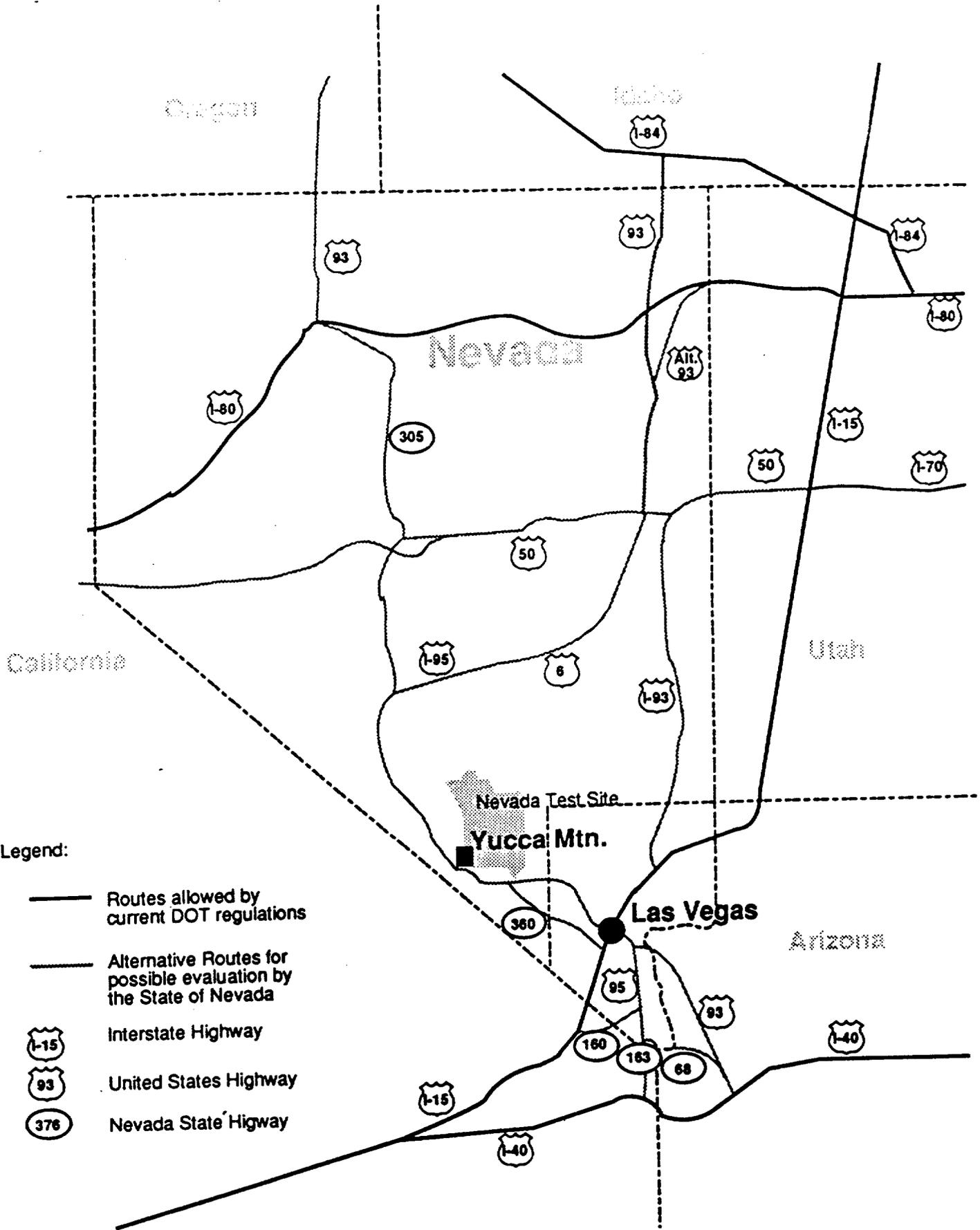
Location Map Yucca Mountain Nuclear Waste Repository



Legend:

-  Existing Railroad Line
-  Proposed Access Road
-  Existing Roadway



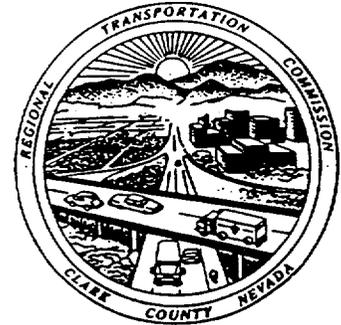


Legend:

- Routes allowed by current DOT regulations
- Alternative Routes for possible evaluation by the State of Nevada
-  Interstate Highway
-  United States Highway
-  Nevada State Highway

TESTIMONY
OF
STAFF OF THE
REGIONAL TRANSPORTATION COMMISSION
OF CLARK COUNTY, NEVADA

Before The
UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD



AMARGOSA VALLEY, NEVADA
AUGUST 17 1990

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OF CLARK COUNTY

TEXT OF TESTIMONY

TESTIMONY
OF
STAFF OF THE
REGIONAL TRANSPORTATION COMMISSION
OF CLARK COUNTY, NEVADA

BEFORE THE
UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD

AMARGOSA VALLEY,
NEVADA
AUGUST 17 1990

I am Lee Gibson, Planning Coordinator of the Regional Transportation Commission (RTC) of Clark County, Nevada. RTC's address is 301 East Clark Avenue, Suite 300, Las Vegas, Nevada 89101. On behalf of the RTC, I would like to welcome the members of the Technical Review Board to Nevada and thank you for this opportunity to share concerns of staff.

RTC is involved in nuclear waste planning activities through an interlocal agreement with the Clark County Nuclear Waste Program. Clark County, the designated affected local government, assists RTC to ensure that transportation-related planning activities meet with the requirements I am about to discuss.

The RTC is an independent commission made up of representatives of governments from all of Clark County. We are designated the Metropolitan Planning Organization by the State of Nevada pursuant to USDOT regulations. As such, we are the organization concerned with all aspects of transportation for the largest population concentration in the State of Nevada, some 760,000 persons.

As the Metropolitan Planning Organization, RTC is responsible for maintaining a comprehensive, coordinated, and continuing transportation planning process as required by 23 CFR 450.100 to 200 (Attached as Exhibit 1). Compliance with these regulations maintains Clark County's eligibility for Federal funding for highway and transit improvements. RTC continually assesses the effect of projected urban development on future travel requirements. This allows our agency to plan for the efficient movement of persons and goods through the Las Vegas Valley in a timely manner. It also allows our elected leaders to work with and plan the effective use of federal funds programmed for highway, transit, rail, and aviation improvements. The RTC has a local responsibility for all aspects of the transportation planning process.

The prospective movement of high level nuclear waste through our

area is of interest to us from a transportation planning perspective. Specifically, we are concerned with the direct effects involving choice of mode; timing of shipment flows; daily, monthly, and annual volumes; vehicular operating characteristics; alternate routes; and contingency plans. Contingency plans are particularly important to the RTC. Even if the Department of Energy produces route plans that do not traverse Clark County, events may occur that require the shipment of nuclear waste on a temporary basis through our jurisdiction.

The transportation issues associated with the repository also must be related to the overall condition of the transportation system within Southern Nevada. As current rapid growth escalates, citizens feel greater and greater frustration with the transportation system. Elected leaders are now attempting to address transportation issues through a new program of revenue sources that will allow local government to implement highway and transit solutions in accordance with Clark County's transportation requirements. DOE should recognize that these attempts to deal with transportation issues are taking place at a time when:

- 1) Baseline conditions change daily.
- 2) Planning efforts are only now addressing the appropriate solutions.
- 3) The repository may induce changes that effect the planning, design, operation, and institutional process that local government now uses to address transportation development.

In the opinion of RTC staff, Yucca Mountain transportation research needs must now focus on baseline studies that document operational issues, population risks, and institutional relations. An urgent need exists to establish the basis for assessing these impacts due to Yucca Mountain activities before characterization work resumes. These baseline studies would be linked not only to Yucca Mountain transportation effects, but also socioeconomic aspects (both internal and external to the project) and institutional issues that may surface.

The institutional issues are critical. The latitude given to local government with respect to conducting studies of the effects of the Yucca Mountain Project are ill-defined. Section 5032 of the Nuclear Waste Policy Amendments Act of 1987, authorizing federal payments to local affected governments, is couched in general terms that authorize local entities to carry out studies appropriate to their situation at their discretion. It is RTC's experience that Federal-local relations may become strained when such general terminology is used as program guidelines. To correct this situation one of two courses of action may be followed:

- (1) Allow local government the initiative to develop their own research programs that incorporate citizen concerns within the

context of the repository and local issues. This would require a great deal of trust by DOE in local government judgement. However, local governments would be responsible for the outcome; General Accounting Office visits would focus on the local grantees.

- (2) DOE could participate in a policy oversight and management role in local government research activity through issuance of regulations and directives modelled, for example, on those of the Urban Mass Transportation Administration (UMTA).

Consequences of the first action for RTC would include that our mission as the MPO would be greatly enhanced. The RTC's ability to coordinate the transportation issues with local concerns would be greatly improved. For example, RTC would be better able to fully integrate and adapt existing analytical tools to meet the effects of the repository in a comprehensive fashion. DOE would of course lose substantial control over the grant program. However, local government would carry the burden for ensuring that control is exercised pursuant to grant contracts and all applicable federal statutes.

Should the second course be chosen, DOE would gain a greater appreciation of local concerns regarding the transportation of high level nuclear waste. DOE would have to assume a more proactive position and even possibly participate as other Federal agencies do in the 3C planning process. For example, DOE may require that extremely detailed work plans, progress reports, and compliances be submitted. It would also be necessary for DOE to actively investigate policy issues and direct the local effort more closely. Of course, the regulations and sensitivities pertaining to oversight may make this inappropriate.

RTC staff looks forward to continuing to work with the DOE on this matter of such crucial interest for the future of Southern Nevada. Thank you again for the opportunity to share the thoughts of the staff of the Regional Transportation Commission with you today here in Amargosa Valley.

EXHIBIT 1
23 CFR 450 SUBPART A--URBAN
TRANSPORTATION PLANNING

federal register

**Thursday
June 30, 1983**

Part VI

Department of Transportation

**Federal Highway Administration
Urban Mass Transportation Administration**

Urban Transportation Planning; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation
Administration

23 CFR Part 450

49 CFR Part 613

Urban Transportation Planning

AGENCY: Federal Highway
Administration (FHWA) and Urban
Mass Transportation Administration
(UMTA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of this document is to issue amendments to existing regulations governing transportation planning under FHWA and UMTA grant programs. These amendments are intended to: (1) increase flexibility at the State and local level; (2) reduce redtape and simplify administration of the planning process; and (3) shift certain responsibilities from the Federal to the State and local level while maintaining an appropriate Federal oversight role.

DATES: These final amendments are effective on August 1, 1983. For additional information, see

"SUPPLEMENTARY INFORMATION".

FOR FURTHER INFORMATION CONTACT: FHWA: Sam W. P. Rea, Jr., Urban Planning and Transportation Management Division, (202) 426-2961, or Jerry Boone, Office of the Chief Counsel, (202) 426-0761; or UMTA: Robert Kirkland, Office of Planning Assistance, (202) 426-2360, or Anthony Anderson, Office of the Chief Counsel, (202) 426-4011, all located at 400 Seventh Street, SW., Washington, D.C. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday; UMTA office hours are from 8:30 a.m. to 5:00 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This document amends the FHWA/UMTA regulations for urban transportation planning (23 CFR Part 450 and 49 CFR Part 613). The provisions of 23 CFR Part 450, Subparts A and B are incorporated into 49 CFR Part 613.

Effective Dates

These final amendments are effective on August 1, 1983. This final rule allows for several simplified procedures to be instituted at the option of State and/or local officials. As such, implementation schedules are not prescribed. However, FHWA and UMTA should be advised as soon as possible of any procedural changes instituted by State and local officials. Section 450.114 institutes a

required State/metropolitan planning organization certification. This certification must accompany all transportation improvement programs/annual (or biennial) elements submitted to FHWA and UMTA after the effective date of this rule. Any difficulties in meeting this requirement should be brought to FHWA and UMTA's attention for resolution on a case-by-case basis.

OMB Control Numbers: 2132-0031 and 2132-0529.

Paperwork Reduction Act

The information collection requirements contained in this regulation (sections 450.106 and 450.110) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control numbers 2132-0031 and 2132-0529.

Background

On September 17, 1975, FHWA and UMTA jointly issued final regulations (40 FR 42976) implementing the urban transportation planning process mandated by the Federal-Aid Highway Act and the Urban Mass Transportation Act of 1964 (UMT Act), as amended. The statutes require a continuing, comprehensive and cooperative (3C) transportation planning process in all urban areas of more than 50,000 population.

Proposed amendments to the urban transportation planning regulations were published for notice and comment on October 30, 1980 (45 FR 71990). Final amendments and a request for additional public comments were published on January 19, 1981 (46 FR 5702). These amendments were originally scheduled to take effect on February 18, 1981. On February 4, 1981, the DOT postponed the effective date until March 31, 1981 (46 FR 10706). This action was taken pursuant to the President's memorandum of January 29, 1981, which, among other things, directed executive agencies to postpone for 60 days the effective dates of regulations which had been issued but were scheduled to become effective during the 60-day period following issuance of the memorandum. As a result of their initial review of the postponed amendments, the FHWA and UMTA decided to postpone the effective date further in order to provide sufficient time for full and appropriate review and revision of the subject amendments (46 FR 19233, March 30, 1981).

Based on their review of the postponed amendments and the

comments submitted to the public docket, FHWA and UMTA decided to withdraw those amendments. In their place, interim final regulations were issued on August 6, 1981 (46 FR 40170) which incorporated only those provisions of the withdrawn amendments which: (1) reduced redtape and streamlined the planning process for areas under 200,000 population; (2) incorporated recent legislative changes; and (3) clarified the purpose of transportation system management (TSM) and several other aspects of the planning process.

As part of FHWA and UMTA's continuing efforts to evaluate their programs, a comprehensive review of the urban transportation planning process was undertaken to determine what further changes should be made in the process. This review considered the shift in Federal priorities away from transit operating assistance and towards maintaining existing highway and transit systems, as well as the President's efforts to reduce Federal intrusion in areas of essentially State and local interest. Neither FHWA nor UMTA has any preconceived positions on the issues under review. The only assumption used to guide the review was that the Federal role would be reduced in areas of essentially State and local interest. The purpose of the comprehensive review was to analyze the various aspects of the transportation planning process and to recommend any changes which would improve the existing delivery of transportation programs to States and local areas with a minimum of Federal involvement.

While this review had been a joint FHWA/UMTA effort, it also had been the subject of extensive participation by national interest groups and the public. Major national associations made suggestions on issues to be addressed, and these suggestions were helpful in preparing an "issues and options" paper, entitled, "Solicitation of Public Comment on the Appropriate Federal Role in Urban Transportation Planning." A notice of availability and request for public comment was published in the Federal Register on December 17, 1981 (46 FR 61531), and an official docket was established to receive comments (FHWA Docket 81-10). This paper served as the vehicle to solicit public comment on specific issues as well as to solicit recommendations on issues not addressed in the paper.

The public comments on the "issues and options" paper clearly indicated that the Federal role in the urban transportation planning process needed reconsideration, especially in regard to

the smaller urbanized areas (those urbanized areas with populations of less than 200,000). This general conclusion was also reflected in the comments from the staffs of both FHWA and UMTA. Further, the experience of FHWA and UMTA in administering the urban transportation planning program authorized by the Federal-Aid Highway and Urban Mass Transportation Acts, and the growing technical abilities of the States and local agencies added support to the position that administrative and regulatory revisions to the federally mandated urban transportation planning requirements must be considered. A detailed summary of the comments is included in the regulatory evaluation.

As a result of the comprehensive review, FHWA and UMTA proposed amendments to the urban transportation planning regulations in a notice of proposed rulemaking (NPRM) published in the Federal Register on August 23, 1982 (47 FR 37758).

The preamble to the NPRM discussed its overall policy direction under the major subject areas of the "Issues and options" paper: Federal Planning Requirement Threshold; Roles and Responsibilities; Planning and Project Implementation; Technical Requirements; Certification; and Federal Funding for the Planning Process. The specific proposals were discussed in detail under the heading, Section-by-Section Analysis, and are restated in this preamble under the same heading.

This final rule is intended, as was the NPRM, to reduce the role of the Federal Government in urban transportation planning to the maximum extent possible under governing statutes. This is accomplished by: (1) Providing for greater State and local flexibility in administering the planning process and associated Federal funds; (2) clarifying the intent with respect to the flexibility of institutional relationships; and (3) eliminating most of the non-regulatory language from the regulation.

This regulation presents a further reduced Federal role, based on a clearer distinction between Federal requirements and good planning practices. FHWA and UMTA intend to continue to provide technical assistance to advance good planning and programming practices. Formalized training courses, as well as on-site visits on an "as requested" basis, will be provided along with other forms of technical assistance.

Disposition of Comments

In response to the notice of proposed rulemaking (NPRM), one hundred-forty seven comments were received including 68 from metropolitan planning

organizations and regional planning agencies, 36 from State departments of transportation, 9 from transit operators and authorities, 18 from State and local governments, 11 from Federal agencies, private citizens and other interested parties, and 9 from national organizations and groups which represent groups such as State and local governments, transit operators, and metropolitan planning organizations.

The majority of the comment were very positive and supported the general purpose of the proposed revisions, that is, to provide more flexibility to State and local officials and to streamline the planning process. While many comments supported the reduction in prescriptive provisions proposed in the NPRM, they believed that several proposed provisions needed clarification and further explanation. Several commenters criticized certain proposed revisions and questioned the basis for these actions.

In the preparation of the final rule set forth below, consideration was given to the concerns mentioned earlier and all other commenters received insofar as they relate to the scope of the NPRM. Comments received after October 23, 1982, (close of comment period) also were considered to the extent that time allowed. The majority of the changes are for the purposes of clarification although several comments did result in substantive alterations to the regulations. The Surface Transportation Assistance Act of 1982, Pub. L. 97-424, required some changes to the NPRM, due to the change to the capital and operating assistance grant programs authorized by amendments to the Urban Mass Transportation Act.

Section-by-Section Analysis

Each section of this final rule is discussed in detail below.

The existing Subpart B to 23 CFR Part 450, "Metropolitan Planning Funds" (40 FR 38151, August 27, 1975, as amended at 46 FR 40176, August 8, 1981) is not affected in any way by this rulemaking action. However, the proposal presented in the NPRM to redesignate this subpart as Subpart C is made final.

The existing appendices regarding transportation system management and simplified procedures in areas under 200,000 population were deleted from the August 28, 1982 NPRM since they are advisory. For that reason those appendices have also been deleted from this final rule. The FHWA and UMTA will continue to provide advice and guidance on these issues, but intend to do so in a non-regulatory manner.

23 CFR 450 Subpart A—Urban Transportation Planning

Section 450.100 Purpose.

This section states that this subpart implements the urban transportation planning requirements of 23 U.S.C. 134 and Section 8 of the Urban Mass Transportation Act of 1964, as amended. The section is unchanged from that proposed in the NPRM.

Section 450.102 Applicability.

This section states that the provisions of this subpart apply to the transportation planning process in urbanized areas and is identical to that in the NPRM.

Section 450.104 Definition.

Section 450.104 defines the terms used in this part. As proposed, the definitions of the terms, "Highway Safety," "Interstate Substitution Projects" and "Interstate System Projects," are no longer included because these terms are defined elsewhere in 23 CFR or are no longer used in this regulation.

The term "Designated Section 9 Recipient" is added to the final rule in recognition of changes to UMTA programs brought about by the Surface Transportation Assistance Act of 1982.

The proposal in the NPRM to allow for an annual element to cover a period of up to two years was widely accepted. However, several commenters recommended that the term, "annual element", be changed to reflect this increased flexibility. The FHWA and UMTA decided to use the term "annual (or biennial) element" in this rule and expect State and local officials will use either "annual element" or "biennial element" depending upon the program period used. The definition is modified slightly to reflect this change.

As proposed in the NPRM, the revision to the definition of the "metropolitan planning organization" is made final. This proposal made more general the wording regarding membership and is meant to be less prescriptive. Also, the last sentence under the term, "metropolitan planning organization," which recommends "that principal elected officials of general purpose local government be represented on the metropolitan planning organization," is deleted since it duplicates paragraph (b) in Section 450.106. Further discussion on these other items directly affecting the metropolitan planning organization is contained in the following section.

Section 450.106 Metropolitan planning organization.

Section 450.106, which provides for the designation of the metropolitan planning organization, is not changed from that proposed in the NPRM. It is intended to follow closely 23 U.S.C. 134(b)(2) and 49 U.S.C. 1607(b)(3) so that the intent of Congress with regard to the designation of metropolitan planning organizations is explicitly recognized.

A number of the commenters expressed concern that the important role of local elected officials was being reduced. This concern was directed at proposed changes to this section as well as sections 450.106 regarding funding, 450.112 regarding participant responsibilities, and 450.206 regarding project selection. These specific concerns are addressed in the discussion in this preamble under each of these sections.

The specific concerns expressed mostly by commenters from local governments and regional planning agencies under Sections 450.106 and 450.104 regard the deletion of the requirement that principal elected officials of general purpose local government have adequate representation on the metropolitan planning organization and that the metropolitan planning organization be defined as, "a forum of cooperative transportation decisionmaking by principal elected officials of general purpose local government." Several U.S. Senators also expressed this same concern.

The FHWA and UMTA strongly believe that local officials involvement in the 3C planning process, through the metropolitan planning organization, is important. The changes proposed in the NPRM were not intended to reflect any change in this belief. Rather, this rule was changed to rely primarily upon the statutory requirements with minimum administrative interpretation to allow the widest latitude possible in the designation of metropolitan planning organizations. Therefore, the provisions of 23 U.S.C. 134 and Section 8 of the UMT Act (49 U.S.C. 1607) are emphasized. These provisions call for the designation of a metropolitan planning organization to be ". . . by agreement among the units of general purpose local government and the Governor."

Local government involvement in the designation or redesignation of a metropolitan planning organization constitutes a substantial and important role for local officials in structuring the 3C process. The FHWA and UMTA strongly believe that the metropolitan

planning organization should adequately represent local elected officials and the implementing agencies, but that decisions such as who should serve on the metropolitan planning organization should be made by local governments and not be mandated by the Federal Government. This representation would be determined at the time of designation or redesignation and does not prohibit appointed officials, such as representatives of the State DOT or local public transit operators, from being voting members of the metropolitan planning organization.

As stated in the NPRM, FHWA and UMTA do not anticipate significant organizational or functional changes being made to existing arrangements as a result of these amendments, which reduce Federal prescription on what responsibilities the organizations or partners in the process must assume as long as there is mutual agreement.

Section 450.106 Urban transportation planning process: Funding.

This new section incorporates various provisions of several sections of the existing regulation and provides the program requirements for the use of FHWA and UMTA planning funds to carry out the urban transportation planning process.

The UMTA has decided to retain the provision proposed in the NPRM giving States the option of receiving and allocating its Section 8 funds for those urbanized areas below the 200,000 population threshold. In response to the concerns of several commenters regarding funding of those small urbanized areas where they are part of larger metropolitan planning organizations, the final regulation has been changed to recognize that groups of urbanized areas under a single metropolitan planning organization with an aggregate population of 200,000 or more should continue to receive funds through the metropolitan planning organization. In addition, many of the smaller urbanized areas were concerned that the draft rule would allow States to opt unilaterally to retain Section 8 funds and spend them for the benefit of the small urbanized areas, rather than passing them through for the direct use by those metropolitan planning organizations. Although States would not be precluded from spending these funds for the benefit of the small urbanized areas, it could only be done with the concurrence of the designated metropolitan planning organization. The final rule has been changed to clarify this point. The UMTA intends that the States allocate the Section 8 funds among small urbanized areas annually

in collaboration with the metropolitan planning organizations in lieu of it being done at the Federal level by UMTA, but there is no intent that the States co-opt the program in these areas. This provision creates a potential for allocation of combined FHWA and UMTA planning funds which is more sensitive to local needs by building on the States current allocation of FHWA planning funds based on a formula approved by FHWA. The FHWA and UMTA also encourage State and local officials to work together to ensure consistent and timely delivery of funds. The FHWA and UMTA are working together to ensure the same at the Federal level.

The reference to 23 U.S.C. 104(f)(3) is included in this regulation as it was in the proposed rule to ensure that the intent of Congress is followed in regard to the administration of PL funds. This section does not prohibit the administration and/or expenditure of PL funds by another organization as allowed under § 450.106(e) so long as agreed to by the metropolitan planning organization. The FHWA strongly encourages such latitude be used, especially in the smaller urbanized areas.

In an effort to reduce the Federal presence in the administration of the planning process in urbanized areas with less than 200,000 population, the FHWA and UMTA proposed in the NPRM that a unified planning work program (UPWP) need not be developed for these areas; rather, planning tasks for these areas would be documented as agreed to by the State and the metropolitan planning organization. This provision was welcomed by most commenters who addressed the issue and has been retained in the final rule. The FHWA and UMTA believe that it is appropriate to provide State and local officials with the flexibility to determine the planning activities that are to be done, who would do the work, and how the funds would be expended without specifying how this information is documented.

In order to strengthen UMTA's long standing advocacy of appropriate transit operator involvement in the planning process, § 450.106(f) of the NPRM was replaced by § 450.106(e) in this final rule to specifically address and encourage fund pass through and the sharing of appropriate work responsibilities by the metropolitan planning organization and transit operators. The FHWA continues to allow pass through of PL funds to other agencies but emphasizes that, in all urbanized areas, the metropolitan planning organization must agree to the

use of PL funds made available to the metropolitan planning organization by the State in accordance with 23 U.S.C. 104(f)(3) and 23 CFR 450.108(a).

Finally, § 450.108 has been modified to reflect provisions of Section 9(f) of Title III of the Surface Transportation Assistance Act of 1982 which provides for the expenditure of Section 9 or 9A grant funds for planning purposes. This Act was passed after the NPRM was published. To assure that planning conducted with Section 9 or 9A funds by designated recipient is fully coordinated with, and a part of the 3C process, § 450.108(c) has been modified to require that Section 9 or 9A funded planning activities be included in the UPWP for areas of over 200,000 population and that the designated recipient be included in the work program development process. Similarly, § 450.108(d) has been modified to require that Section 9 or 9A funds used for planning purposes be included in the description of activities for areas of less than 200,000 population.

Section 450.110 Urban transportation planning process: Products.

Section 450.110 is identical to that proposed in the NPRM except that paragraph (a) has been changed slightly to be more consistent with statutory language.

As proposed in the NPRM, this section combined and simplified several sections of the existing regulation. The FHWA and UMTA are reducing the product requirements to the minimum necessary to permit Federal stewardship: (1) A transportation plan (without the requirement for long- and short-range elements), and (2) the TIP and its annual (or biennial) element. Consequently, State and local officials will have maximum flexibility in developing and endorsing these products. A planning work program will continue to be required under section 450.108 to support the request for PL and Section 8 funds needed to perform these activities and prepare these products.

Several commenters were concerned by the lack of guidance presented in this section, especially with regard to the transportation plan. The FHWA and UMTA continue to believe that many of the existing provisions are advisory and, therefore, have been removed from the regulation.

Several commenters were concerned with the issue of the geographic scope of planning, which was not specifically addressed in the NPRM. The existing regulations require the planning process to cover, "as a minimum, the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan." 23

U.S.C. 134 and 49 U.S.C. 1607 require that area which lies within the urbanized area boundary (as defined by the Bureau of the Census) is the minimum geographic area to be covered by the 3C process. The statutory requirement is reflected in § 450.100, "Purpose," and section 450.102, "Applicability," of this final rule. Defining a geographic area larger than this minimum is permitted. It should be determined by State and local officials and consider such factors as the areas which will be urbanized in the foreseeable future, representation on a metropolitan planning organization, jurisdictional boundaries, as well as the current and future transportation system and transportation issues in the area. The FHWA and UMTA do not intend to prescribe the outer boundaries of the urban transportation planning area but expect that State and local officials will establish appropriate geographic boundaries for the urban transportation planning process.

Several commenters also were concerned that FHWA and UMTA, by eliminating specific requirements for long- and short-range elements of the plan were de-emphasizing an orderly flow of the planning and project development process from general systems analysis through analysis of alternatives to project selection and implementation. This is not the case. Several commenters also believed that the "regional" nature of the planning process would be lost without a Federal requirement for a long-range element. The FHWA and UMTA believe the planning process has matured to the extent that neither time horizons nor specific plan elements have to be specified in Federal regulations and anticipate that without this specificity, the transportation plan will be more responsive to each area's situation, and result, therefore, in more useful products of the planning process.

Paragraph (c) has been retained in this final rule to indicate that the planning process may also include other planning and project development activities, as determined by State and local officials, in addition to those indicated in paragraphs (a) and (b). The FHWA and UMTA believe that while the 3C process is mandated by Federal law its objective is to insure that important State and local transportation issues are adequately addressed.

Section 450.112 Urban transportation planning process: Participant responsibilities.

This section is retained as proposed in the NPRM. It provides for the metropolitan planning organization, the

State and publicly owned operators of mass transportation services to mutually determine their roles and responsibilities for developing the products of the urban transportation planning process. This change gives the principal participants greater flexibility in determining their appropriate roles and is intended to eliminate the perception that there are regulatory restrictions regarding the involvement of implementing agencies in the urban transportation planning process. This change also eliminates the existing requirement for an annual endorsement of the transportation plan and TIP/annual (or biennial) element. Since these may not change significantly from year to year, an annual endorsement may be an unnecessary burden. Endorsement of the transportation plan will only be necessary when significant changes occur and endorsement of the TIP/annual (or biennial) element will be required when a new or revised TIP/annual (or biennial) element is submitted to FHWA and UMTA. The FHWA and UMTA encourage the use of simplified procedures for revising the annual (or biennial) element.

The Federal requirements prescribed by section 450.108 of the existing regulation for agreements between the metropolitan planning organization, State, and transit operators, as necessary, are eliminated since these requirements are an unnecessary Federal intrusion.

While most of the commenters supported the increased flexibility afforded State and local officials, a number of commenters believed that without a federally prescribed "lead agency" or explicit Federal support for a particular assignment of responsibilities, major disagreements among the parties could result in a stalemate. As stated earlier, this regulation provides State and local officials with increased flexibility to carry out the 3C process with a minimum Federal role. Inherent with this increased flexibility is the responsibility to reconcile their differences.

Section 450.114 Urban transportation planning process: Certification.

In keeping with the goal of reducing the Federal presence in urban transportation planning, FHWA and UMTA proposed in the NPRM that the current procedures for Federal certification of the planning process be eliminated and that the State and the Metropolitan planning organization certify that the planning process complies with all applicable Federal laws and regulations. This section of the

NPRM also required that the planning process be consistent with other Federal laws and that the process include activities to support the development and implementation of the TIP, transportation plan and subsequent project development activities as necessary and to the degree appropriate.

The existing section concerning certification (§ 450.212) and elements (§ 450.120) are combined as proposed in the NPRM to clarify what the State/metropolitan planning organization certification action should address. Furthermore, the list of technical activities included in the existing regulation was considered to be advisory and, therefore, was deleted from the NPRM. For that same reason, the list is not included in this final rule.

The commenters were very supportive of this State/metropolitan planning organization certification as proposed. Therefore, FHWA and UMTA decided to retain this provision as proposed, except for the changes noted below.

Several commenters recommended that the certification action be based on criteria established by FHWA and UMTA. FHWA and UMTA believe that this final rule in fact contains the criteria and do not intend to provide a more explicit interpretation except as included in this preamble. To do so would detract from the responsibility of State and local officials to assess the adequacy of the urban transportation planning process. FHWA and UMTA believe that this final rule provides adequate interpretation of the applicable statutes.

Paragraph (a) has been revised to emphasize that the urban transportation planning process must also include activities to support the implementation as well as the development of the transportation plan and TIP.

Paragraph (b) of the NPRM regarding the State/metropolitan planning organization certification provision has been revised in the final rule. Subparagraph (b)(4) of the NPRM has been deleted since the statutory requirements it references (23 U.S.C. 109(h), 49 U.S.C. 1604(h)(2), and 49 U.S.C. 1610, regarding social, economic and environmental impacts) address areas already covered by 23 U.S.C. 134 and 49 U.S.C. 1607 and are project level requirements. Also, the references to 49 U.S.C. 1602(d) and 1610(b) in paragraph (c) are deleted for the same reasons.

Subparagraph (b)(4) regarding the elderly and handicapped provision is not subject to the State/metropolitan planning organization certification as proposed in the NPRM, since 49 CFR Part 27, the regulation implementing this

requirement, already requires a separate certification action.

A new subparagraph (b)(5) is added to reflect changes concerning minority business enterprises brought about by the Surface Transportation Assistance Act of 1982 Pub. L. 97-424, Section 105(f). The planning process should take into account the need to comply with the requirements of Section 105(f) regarding involvement of minority business enterprises in FHWA and UMTA funded projects.

The two requirements addressed by the State/metropolitan planning organization certification action are:

The urban transportation planning process requirements of 23 U.S.C. 134 and 49 U.S.C. 1607 and requirements of this final rule; and

The transportation planning and programming-related requirements contained in Sections 174 and 176 (c) and (d) of the Clean Air Act. Implementing regulations are contained in 23 CFR Part 770 and 49 CFR Part 623.

The urban transportation planning process requirements are included to provide the State and local officials increased responsibility in carrying out the urban transportation planning process. This certification action is intended to provide a focal point for the State/metropolitan planning organization assessment of the planning process. The Clean Air Act requirements are included because of the relationship between urban transportation planning and transportation related air quality planning as presently identified in the Clean Air Act, as amended.

Several commenters questioned the differences between these two requirements and the two requirements included in section 450.114(c) and (d) of the NPRM regarding private enterprise and civil rights. These commenters were concerned that FHWA and UMTA were giving greater emphasis to these two requirements because they were specifically cited outside of the self-certification provisions. This was the intent; FHWA and UMTA continue to believe that these two statutory provisions require additional Federal attention outside of the State/metropolitan planning organization certification procedures.

This certification action is intended to be a simple statement that the requirements of 23 CFR Part 450 have been met (i.e., "We certify that the requirements of 23 CFR 450.114(c) are met.") A more elaborate submittal (i.e., with supporting documentation) is acceptable but not required by FHWA or UMTA. Since the certification action is to reflect the current planning process, it is to be submitted to FHWA and

UMTA at the time a new TIP, including the annual (or biennial) element is submitted to the Federal Government, but no less frequently than 4 years. This requirement is not intended to mandate when the actual certification action is to take place. However, FHWA and UMTA expect that development and preparation of the TIP, including the annual (or biennial) element being submitted, is based on a currently certified process and that, at a minimum, a statement to this effect should accompany the TIP. The FHWA and UMTA want to stress that the certification procedures should be determined by the State and metropolitan planning organization. FHWA and UMTA encourage a joint single action, although it is not required.

Institution of the State/metropolitan planning organization self certification does not relieve FHWA and UMTA of their oversight responsibilities and the necessity of making statutory findings discussed under § 450.212 "Program Approval." The FHWA and UMTA will still conduct appropriate, independent reviews as a basis for these findings. The State/metropolitan planning organization self certification, and these reviews will assist FHWA and UMTA in meeting their statutory responsibilities.

The State/metropolitan planning organization certification is not an optional requirement. Therefore, some action must be taken in order for FHWA and UMTA to make subsequent program and project approvals under § 450.212. However, failure of either party to certify full compliance does not, by itself, necessarily trigger a negative finding by either FHWA or UMTA. In such cases FHWA and UMTA intend to discuss the situation with the parties involved to determine the cause of their action as well as possible remedies. Other factors which also form the basis for the Federal finding, such as a properly developed and endorsed TIP, a plan and work program, will also be considered during these discussions.

Deficiencies in the process identified by State and local officials are to be corrected according to their own proposals, within a reasonable self-imposed time frame.

23 CFR 450 Subpart B—Transportation Improvement Program

Section 450.200 Purpose.

This section is retained as proposed in the NPRM. The NPRM proposal differed from the existing regulation by dropping the language, "and to prescribe guidelines for the selection by implementing agencies of annual

programs of projects to be advanced in urbanized areas." This language is no longer necessary since the prescriptive provisions included in the existing regulation regarding project initiation are eliminated (see section 450.208).

Section 450.202 Applicability.

Section 450.202 states the types of projects to which this rule applies. The projects are categorized by the various Federal funding programs. Projects under the Highway Bridge Replacement and Rehabilitation (HBRR) Program (23 U.S.C. 144), and the Sections 9 and 9A transit program created by the Surface Transportation Assistance Act of 1982 (49 U.S.C. 1607a and 1607a-1) have been added to those that were listed in the NPRM. Although the Interstate 4R program was technically included in the existing regulation, under the general citation for the Interstate System (23 U.S.C. 104(b)(5)), there was some confusion because it was not explicitly identified in the NPRM. This has been clarified by including the specific reference to the Interstate 4R program in this section.

The FHWA believes the HBRR program should be subject to the urban transportation planning process because major bridge reconstruction projects in urbanized areas may have potential regional impact and intergovernmental interest. While the FHWA believes that these types of bridge projects are being included in the TIP process because they most likely are located on a roadway designated as part of a Federal-aid system, the direct citation of the program in this section should make it clear that the regulation does apply. Many areas already include those classes of projects in their TIP and annual element.

The Section 9 program (and the Section 9A program through fiscal year 1983) are also added. These programs are subject to the urban transportation planning process by virtue of the self-certification requirement contained in section 9(e)(3)(G) of the UMT Act. Information regarding the Section 9A program was published by UMTA in the January 24, 1983, *Federal Register*, (48 FR 3300) and in UMTA Circular C-9020.1 of February 3, 1983. Information regarding the Section 9 program will be published in the *Federal Register* prior to October 1, 1983.

Several commenters questioned the need to retain the provision that projects "serving" (as opposed to "in") urbanized areas be included. The FHWA and UMTA believe that many transportation improvements are constructed or instituted for the sole purpose of serving the needs of a specific urbanized area.

Transit routes, carpool and vanpool lanes, and park-and-ride lots, are a few examples of the types which would be outside of an urbanized area's boundaries but whose primary purpose is to serve the transportation needs of the urbanized areas.

Paragraph (b) has been changed to allow the State, upon agreement in writing with the metropolitan planning organization, to propose Federal-aid primary, Interstate (including 4R) and HBRR projects (but not Federal-aid urban system projects, Interstate substitution projects or UMTA-funded projects) for implementation in the statewide program of projects (105 program), without these projects being drawn from the annual (or biennial) element of the TIP if they are repair, safety, or localized traffic operation projects that do not alter the functional traffic capacity or capability of the facilities being improved.

This revised paragraph expands the provisions in the NPRM which covered only highway safety-related projects that are included in the State prepared highway safety improvement program under 23 CFR 924. The reference to the highway safety improvement program is eliminated from this final rule since safety-related projects are now covered by this optional provision.

The FHWA has decided to expand the provision to include, in addition to highway safety improvement projects, other projects which are not of significant scale to warrant the same level of effort required for projects with greater regional impact. Quite often, these improvements evolve from the statewide or systemwide program to maintain and improve the condition and safety of existing streets and highways. The FHWA believes that these types of projects need not be on the TIP, including the annual (or biennial) element, to assure adequate transportation planning and programming under 23 U.S.C. 134(a). This optional and flexible provision does not exempt these types of projects from being based on the 3C process and FHWA fully intends to continue to exercise its statutory authority under 23 U.S.C. 134(a) which requires the Secretary to make such a finding.

The FHWA anticipates that this optional provision will be used primarily to address categories of projects (as opposed to individual projects) and will be exercised in concert with simplified procedures to update the TIP and annual (or biennial) element under Section 450.204(c) and the procedures to select projects for inclusion in the annual (or biennial) element under 450.206(a)(4).

FHWA stresses that: (1) This provision applies only to the certain types or categories of projects described earlier and, (2) the State/metropolitan planning organization agreement is a key requirement. Regarding the project types, the State should make FHWA aware of the exclusion that the State intends to apply as early as possible. This early action is intended: (a) To provide FHWA with sufficient time to alert the State to any concerns FHWA may have regarding the types of projects (or categories of projects) proposed to be covered by this provision, and (b) to preclude the delay of the projects when the 105 program or an amendment to it is formally submitted to FHWA.

Regarding the agreement requirement, the State should clearly indicate how it was accomplished (e.g., copies of the correspondence). FHWA fully expects the agreement to be made sufficiently in advance of the preparation of the annual statewide program of projects under 23 U.S.C. 105 or any proposed amendment to an approved program of projects. This provision allows for the agreement to be effective for several years, however, the State's notification to both FHWA and the metropolitan planning organization is to be on the same cycle as 105 program actions, and projects (or categories of projects) should be identified whenever possible in the same detail that they will be described in the 105 program of projects.

The existing requirement that the State notify the appropriate metropolitan planning organization of 105 program actions taken on projects (or categories of projects) in each urbanized area is retained as § 450.210(d).

Section 450.204 Transportation improvement program: General.

This section is retained in identical form as proposed in the NPRM except that paragraph (d)(2) is changed slightly to indicate clearly that FHWA does not take any approval action on the TIP, including the annual (or biennial) element but rather uses it as a basis for meeting the applicable air quality procedures contained in 23 CFR Part 770 and as a basis for the subsequent review and approval of the statewide program of projects under 23 U.S.C. 105. As proposed in the NPRM, this section incorporated sections 450.314, "Annual element modification," and 450.316, "Action required by the metropolitan planning organization."

Section 450.208 Annual (or biennial) element: Project selection.

The proposal to eliminate § 450.310, "Annual element: Project initiation" and replace it with § 450.208 has been retained in this final rule. Several commenters opposed this proposal, believing that the authority for selecting Federal-aid urban system projects mandated by 23 U.S.C. 105(d) was being ignored. The FHWA and the UMTA do not believe that this is the case. Section 450.310 provided for an administratively determined procedure for initiating all projects, not just Federal-aid urban system projects, which FHWA and UMTA believe is too prescriptive and goes beyond the statutory requirements.

Section 105(d) of 23 U.S.C. does not refer to project initiation; it states in pertinent part that Federal-aid urban system projects, ". . . be selected by the appropriate local officials with the concurrence of the State highway department . . ."

The statutory requirement is explicitly acknowledged in section 450.208(e)(2). Also the statutory requirement regarding the selection of Interstate substitution projects by responsible local officials, contained in 23 U.S.C. 103(e)(4) and 23 CFR 476 is acknowledged in § 450.208(a)(3). The FHWA and UMTA believe that the specific procedures to meet these statutory provisions should be decided by the local officials and not prescribed by the Federal Government. The FHWA and UMTA also believe that endorsement of the annual (or biennial) element by the metropolitan planning organization will be evidence that local officials have in fact selected the Federal-aid urban system projects as well as the Interstate substitution projects on the annual (or biennial) element. Paragraph (b) to § 450.208 has been added to recognize this concern.

Section 450.208 Annual (or biennial) element: Content.

The only change to this section from that proposed in the NPRM is made to clarify paragraph (b)(1) that project phases as well as complete projects may be proposed in the annual (or biennial) element. The word "phase" replaces "stage" which appears in the existing regulation and the NPRM in order to use the term which appears in 23 CFR Part 630.

Several commenters suggested that either the TIP or the annual element be eliminated, while others gave strong support to inclusion of both the TIP and the annual element. The proposal in the NPRM to allow for an annual element to cover a period of up to two years was widely accepted. These were similar

comments received on the "issues and options" paper. Based on these comments, FHWA and UMTA believe that the relationship between the TIP and the annual (or biennial) element and their role in the project development process need to be clarified.

The annual (or biennial) element is simply the list of transportation improvement projects proposed for implementation during the first year (or 2 years) of the program period of the TIP. Projects in the annual (or biennial) element are generally described in greater detail than those in the TIP. This description is to be based on the factors included in section 450.208(b) and is necessary for subsequent Federal program approvals.

This TIP provides continuity between the transportation planning process, the transportation plan and the projects included in the annual (or biennial) element. As such, the TIP provides a framework in which to place, in perspective, those projects which are proposed for implementation with the policies and strategies of the area described in the transportation plan (not necessarily discrete projects).

While longer range projects and subsequent phases of a project are to be included in the TIP, there is no requirement that those improvements selected for inclusion in the annual (or biennial) element must have appeared first in the out years of the TIP. However, as the schedule for a project (or improvement) in the TIP advances, its description should be refined to the level of detail needed to allow it to be included in the annual (or biennial) element.

Metropolitan planning organization endorsement of the TIP (which includes the annual (or biennial) element) is a prerequisite for subsequent FHWA and UMTA approvals of the programs of projects. In addition, the metropolitan planning organization endorsement of the annual (or biennial) element constitutes the selection of projects by local officials pursuant to 23 U.S.C. 105(d) and 103(e)(4). One endorsement action satisfies both requirements.

Section 450.210 Selection of projects for implementation.

The only substantive changes made to this section relate to the addition of the HBRR projects to the applicability section, (450.202(a)(6)) and optional exclusion allowed under § 450.202(b). Both of these are discussed in detail in this preamble under § 450.202.

The NPRM proposed that an already existing exemption which currently applies to Interstate and primary projects be extended to apply to

Federal-aid urban system projects. This proposal has been made final. This provision permits proposed urban system projects, for which substantial commitment of Federal funding has been made, to be included in the statewide program of projects under 23 U.S.C. 105 without having been in the current annual (or biennial) element. These projects may be included in the 105 program only if (1) they have already received Federal approval for right-of-way acquisition or federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded and (2) previous phases of such project or projects were included in an annual (or biennial) element endorsed by the metropolitan planning organization. This provision does not affect those urban system projects which, as of the effective date of this final rule, have already received Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded.

This provision is based on the rationale behind the existing regulatory provision that the commitment of substantial resources for a project which has advanced through the planning process to later phases of development should be considered, in effect, committed to that project from a planning standpoint. This concept has been extended to similar urban system projects.

Several commenters objected to this proposal on the grounds that they believed it makes the priority setting process of the metropolitan planning organization meaningless and thwarts the planning of when and if projects will advance. The FHWA and UMTA do not share this view since these projects must be included in a metropolitan planning organization endorsed annual (or biennial) element and receive Federal approval either for right-of-way acquisition, construction or implementation prior to reaching such an advanced stage of development.

It should be noted that this exemption is not intended to circumvent the role of local officials in the urban transportation planning process, especially with respect to the selection of Federal-aid urban system projects. If this exemption is used, § 450.210(b)(3)(iii) requires that the state must submit a statement with the 105 program of projects which includes for each applicable project or group of projects the views of the metropolitan planning organization and indicates how

the requirements of 23 U.S.C. 134(a) have been met. In addition, § 450.210(d) requires the State to notify the metropolitan planning organization of the disposition of the projects on the annual (or biennial) element as well as those projects included on the 105 program of projects under either this exemption or the optional provision provided under § 450.202(b).

Paragraph (c) of this section has been changed from the NPRM to specifically acknowledge that the agreement between the State and metropolitan planning organization under § 450.202(b) will satisfy the requirement that the projects or categories of projects affected by the agreement are based on the 3C process.

Section 450.212 Program approval.

Two changes are made to this section from that proposed in the NPRM. The first change is the addition of the clause "and Interstate substitution projects" to paragraph (a). This is done to acknowledge that these projects are not identified on the statewide program of projects prepared pursuant to 23 U.S.C. 105 but are to be based on the planning process. This omission was identified by several commenters.

The second change is the addition of HBRR projects to the FHWA approval under paragraph (a)(4).

Several commenters pointed out that a reference to FHWA's air quality-related responsibilities under 23 CFR Part 770, "Air Quality Conformity and Priority Procedures for use in Federal-Aid Highway and Federally Funded Transit Programs" was not included in this section. FHWA decided that a reference to 23 CFR Part 770 is more appropriate § 450.204(d)(2). As was stated in the earlier explanation of § 450.204, FHWA reviews the TIP when it is submitted, but does not take any approval action.

Other Considerations

The NPRM indicated that FHWA and UMTA were evaluating the merits of having certification acceptance (23 CFR Part 640) apply to the 3C planning process and requested comments accordingly. Based on the comments received FHWA and UMTA have decided not to take any action at this time to include the 3C process under the certification acceptance provisions.

Administrative Matters

These amendments are considered to be significant under the regulatory policies and procedures of the Department of Transportation because they involve important departmental policy. A regulatory evaluation has been prepared and is available for inspection

in the rulemaking docket (No. 82-10, Room 4205). Copies of the regulatory evaluation may be obtained by contacting Mr. Sam W. P. Rea, Jr., at the address provided above under the heading "For Further Information Contact." The FHWA and UMTA have determined that this final rule does not constitute a major rule under the criteria of Executive Order 12291. These amendments reduce burdens imposed on State and local governments in the conduct of urban transportation planning and will not have a significant economic impact. Accordingly, under the criteria of the Regulatory Flexibility Act, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 23 CFR Part 450 and 49 CFR Part 613

Grant programs—transportation, Highways and roads, Mass transportation, Urban transportation planning.

In consideration of the foregoing, the FHWA and UMTA hereby amend Chapter I of Title 23, Code of Federal Regulations, and Chapter VI of Title 49, Code of Federal Regulations, as set forth below:

1. Part 450, Subpart A of 23 CFR is revised to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Urban Transportation Planning

- Sec.
- 450.100 Purpose.
 - 450.102 Applicability.
 - 450.104 Definitions.
 - 450.106 Metropolitan planning organization.
 - 450.108 Urban transportation planning process: Funding.
 - 450.110 Urban transportation planning process: Products.
 - 450.112 Urban transportation planning process: Participant responsibilities.
 - 450.114 Urban transportation planning process: Certification.

Authority: 23 U.S.C. 104(f)(3), 134 and 315; Secs. 3, 5, 8, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, 1607, 1607a, and 1607a-1); Secs. 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.48(b) and 1.51.

Subpart A—Urban Transportation Planning

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134, and Section 8 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1607), which require that each urbanized area, as a condition to the

receipt of Federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area. These plans and programs support transportation improvements and subsequent project development activities in the area.

§ 450.102 Applicability.

The provisions of this subpart are applicable to the transportation planning process in urbanized areas.

§ 450.104 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

(b) As used in this part:

(1) "Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

(2) "Designated Section 9 Recipient" means that organization designated in accordance with Section 9(m) or 5(b)(1) of the UMT Act, as amended, as being responsible for receiving and dispensing Section 9 and/or Section 5 funds.

(3) "Metropolitan planning organization" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(1), 8 (a) and (c) and 9(e)(3)(G) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1), 1607 (a) and (c) and 1607a(e)(3)(G)). The metropolitan planning organization is the forum for cooperative transportation decisionmaking.

(4) "Annual (or biennial) element" means a list of transportation improvement projects proposed for implementation during the first year (or 2 years) of the program period.

(5) "Transportation improvement program (TIP)" means a staged multiyear program of transportation improvements including an annual (or biennial) element.

§ 450.106 Metropolitan planning organization.

(a) Designation of a metropolitan planning organization shall be made by agreement among the units of general purpose local government and the Governor. To the extent possible, only one metropolitan planning organization should be designated for each urbanized area or group of contiguous urbanized areas.

(b) Principal elected officials of general purpose local governments shall be represented on the metropolitan planning organization to the extent agreed to pursuant to paragraph (a) of this section.

§ 450.108 Urban transportation planning process: Funding.

(a) Funds authorized by 23 U.S.C. 104(f) shall be made available by the State to the metropolitan planning organization, as required by 23 U.S.C. 104(f)(3).

(b) Funds authorized by Section 8 of the UMT Act (49 U.S.C. 1607) shall be made available to the metropolitan planning organization, to the extent possible, in urbanized areas with populations of 200,000 or more or where the metropolitan planning organization represents a group of contiguous or related urbanized areas with an aggregate population of 200,000 or more. In urbanized areas with populations below 200,000, such funds shall be made available to the State, at the State's option, to allocate among such urbanized areas, or, with respect to any given urbanized area, to use for the benefit of such area with the concurrence of the metropolitan planning organization. If the State does not elect this option, these funds shall be made available directly to the metropolitan planning organization, to the extent possible.

(c) In urbanized areas with populations of 200,000 or more, the State, metropolitan planning organization, and designated Section 9 or 9A funds recipient, where Section 9 or 9A funds are used for planning purposes, shall develop a unified planning work program (UPWP) which describes urban transportation and transportation related planning activities anticipated in the area during the next 1- or 2-year period including the planning work to be performed with Federal planning assistance and with funds available under Section 9 or 9A, if any. The UPWP shall be endorsed by the metropolitan planning organization. (OMB Control Number 2132-0031)

(d) In urbanized areas with populations below 200,000, the State and the metropolitan planning organization (and where Section 9 or 9A funds are to be used for planning, the designated recipient) shall cooperatively describe and document how Federal planning funds and funds available under Section 9 or 9A if any, would be expended for planning in each area, who would do the work and what work in general would be done. The work proposed shall be endorsed by the metropolitan planning organization.

(e) The staff resources of other agencies (such as the State, local government and transit operator staff) may be utilized where appropriate to carry out the planning process, including the activities funded with Federal planning funds, through contractual agreements.

§ 450.110 Urban transportation planning process: Products.

The urban transportation planning process shall include the development of:

(a) A transportation plan describing policies, strategies and facilities or changes in facilities proposed. The transportation plan shall be formulated according to the requirements of 23 U.S.C. 134 and Section 8 of the UMT Act (49 U.S.C. 1607) which include and analysis of transportation system management strategies to make more efficient use of existing transportation systems.

(b) A transportation improvement program (TIP) including an annual (or biennial) element as prescribed in Subpart B of this part. The program shall be a staged multiyear program of transportation improvement projects consistent with the transportation plan. (OMB Control Number 2132-0529)

(c) Other planning and project development activities deemed necessary by State and local officials to assist in addressing transportation issues in the area.

§ 450.112 Urban transportation planning process: Participant responsibilities.

(a) The metropolitan planning organization, the State, and publicly owned operators of mass transportation services shall determine their mutual responsibilities in the development of the planning work program, transportation plan and TIP specified in Sections 450.108 and 450.110.

(b) The metropolitan planning organization shall endorse the transportation plan and TIP required by Sections 450.110 and 450.204. These endorsements are prerequisites for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), Section 8(c) of the UMT Act (49 U.S.C. 1607(c)), and Subpart B of this part.

§ 450.114 Urban transportation planning process: Certification.

(a) The urban transportation planning process shall include activities to support the development and implementation of a transportation plan and TIP/annual (or biennial) element and subsequent project development activities, including the environmental

impact assessment process. These activities shall be included as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems.

(b) The planning process shall be consistent with:

(1) Sections 8(e) and 3(e) (49 U.S.C. 1607 and 1602(e)) of the UMT Act concerning involvement of the appropriate public and private transportation providers;

(2) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794.

(3) Section 105(f) of the Surface Transportation Assistance Act of 1982 regarding the involvement of minority business enterprises in FHWA and UMTA funded projects (Pub. L. 97-424, Section 105(f); 49 CFR Part 23); and

(4) Section 16 of the UMT Act 49 U.S.C. 1612, Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR Part 27, which call for special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons.

(c) At the time the TIP/annual (or biennial) element is submitted, the State and the metropolitan planning organization shall certify that the planning process is being carried on in conformance with all applicable requirements of:

(1) 23 U.S.C. 134, Section 8 of the UMT Act (49 U.S.C. 1607) and these regulations;

(2) Sections 174 and 178 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7508 (c) and (d)).

Subpart B (§§ 450.200-450.206) Redesignated as Subpart C (§§ 450.300-450.306).

2. Part 450, Subpart B, Metropolitan Planning Funds, (40 FR 36151, August 27, 1975, as amended) is redesignated as Part 450, Subpart C.

The sections are renumbered as follows:

Former section	New section
450.200	450.300
450.206	450.306
450.204	450.304
450.208	450.308

3. Former Part 450, Subpart C is redesignated as Part 450, Subpart B and revised to read as follows:

Subpart B—Transportation Improvement Program

Sec. 450.200 Purpose.

Sec.

450.202 Applicability.

450.204 Transportation Improvement program: General.

450.206 Annual (or biennial) element: Project selection.

450.208 Annual (or biennial) element: Content.

450.210 Selection of projects for implementation.

450.212 Program approval.

Authority: 23 U.S.C. 105, 134(a), and 135(b); Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c); Sections 174 and 176 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.46(b) and 1.51.

Subpart B—Transportation Improvement Program

§ 450.200 Purpose.

The purpose of this subpart is to establish regulations for the development, content, and processing of a cooperatively developed transportation improvement program (TIP) in urbanized areas.

§ 450.202 Applicability.

(a) The provisions of this subpart shall be applicable to projects in or serving urbanized areas with funds made available under:

- (1) 23 U.S.C. 104(b)(6) (urban system projects);
- (2) 23 U.S.C. 103(e)(4) (interstate substitution projects);
- (3) Sections 3, 5, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (UMTA Act) (49 U.S.C. 1602, 1604, 1607a and 1607a-1) (UMTA capital and operating assistance projects);
- (4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart

(5) 23 U.S.C. 104(b)(5) (A) and (B) (projects on the Interstate System), except as provided in this subpart.

(6) 23 U.S.C. 144 (highway bridge replacement and rehabilitation projects), except as provided in this subpart.

(b) Projects under paragraphs (a) (4), (5) and (6) of this section which are for resurfacing, restoration, rehabilitation, reconstruction (4R), or highway safety improvement; and which will not alter the functional traffic capacity or capability of the facility being improved may be excluded from the TIP including its annual (or biennial) element by agreement between the State and the metropolitan planning organization.

§ 450.204 Transportation Improvement program: General.

(a) The TIP, including the annual (or biennial) element, shall be developed by the metropolitan planning organization, the State and publicly owned operators of mass transportation services in

cooperation with recipients authorized under Sections 5, 9, or 9A of the UMT Act (49 U.S.C. 1604, 1607a or 1607a-1).

(b) The TIP shall as a minimum: (1) Consist of improvements from the transportation plan developed under Section 450.110(a) and recommended for Federal funding during the program period;

(2) Cover a period of not less than 3 years;

(3) Indicate the area's priorities; and

(4) Include realistic estimates of the total costs and revenues for the program period.

(c) The metropolitan planning organization endorsement of the TIP including the annual (or biennial) element is a prerequisite for the approval of programs of projects in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), and Section 8(c) of the UMT Act (49 U.S.C. 1607(c)). The State, metropolitan planning organization, and publicly owned operators of mass transportation services are encouraged to develop simplified procedures for updating or modifying an endorsed annual (or biennial) element.

(d) The TIP including the annual (or biennial) element shall be submitted:

- (1) To the Governor and the Urban Mass Transportation Administrator, and
- (2) Through the State to the Federal Highway Administrator for use as a basis for meeting the applicable air quality procedures contained in 23 CFR Part 770 and for the subsequent approval of the statewide program of projects under 23 U.S.C. 105 in accordance with § 450.212 and 23 CFR Part 630.

§ 450.206 Annual (or biennial) element: Project selection.

(a) Federally funded projects shall be selected for inclusion in the annual (or biennial) element at all phases in the development of the transportation improvement for which program action is proposed. The projects to be included in the annual (or biennial) element of the TIP shall be selected in accordance with:

- (1) State and local law;
- (2) 23 U.S.C. 105(d) regarding the selection of urban system projects by the appropriate local officials with concurrence of the State highway department;
- (3) 23 U.S.C. 103(e)(4) and 23 CFR Part 476 regarding the selection of interstate substitution projects by the responsible local officials; and
- (4) Procedures acceptable to the State highway department, the metropolitan planning organization, and local public transit operating officials.

(b) The endorsement of the annual (or biennial) element of the TIP by the metropolitan planning organization constitutes the selection of the projects by local officials pursuant to 23 U.S.C. 105(d) and 23 U.S.C. 103(e)(4).

§ 450.208 Annual (or biennial) element: Content.

(a) Except as provided in Section 450.210(b)(3) and (4), the annual (or biennial) element shall contain projects selected under Section 450.206 and endorsed under § 450.204.

(b) With respect to each project under paragraph (a) of this section the annual (or biennial) element shall include:

- (1) Identification of the projects, including the phase of phases proposed for implementation.
- (2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program period.
- (3) Proposed source of Federal and non-Federal matching funds; and
- (4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal funding that are not considered to be of appropriate scale for individual inclusion in the annual (or biennial) element may be grouped by functional classification, geographic area or work type.

(d) The annual (or biennial) element shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the annual (or biennial) element and proposed for funding under Sections 5, 9, or 9A of the UMT Act (49 U.S.C. 1604, 1607a and 1607a-1) may not exceed apportioned Section 5, 9, or 9A funds available to the urbanized area during the program year (or 2 years).

§ 450.210 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under Sections 3, 5, 9 and 9A of the UMT Act (49 U.S.C. 1602, 1604, 1607a and 1607a-1) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the annual (or biennial) element of the TIP submitted to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105:

- (1) Those projects drawn from the annual (or biennial) element and

proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which the State concurs); provided, however, that in case any where the State does not concur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects.

(2) Those projects drawn from the annual (or biennial) element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and 23 U.S.C. 144 (highway bridge replacement and rehabilitation projects), in which it concurs:

(3) Those projects not drawn from the annual (or biennial) element that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid highway urban system), 23 U.S.C. 104(b)(1) (Projects on urban extensions of the Federal-aid primary system) and 23 U.S.C. 104(b)(5) (Projects on the Interstate System) provided that:

(i) Previous phases of such project or projects were selected pursuant to Section 450.206, and advanced;

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way or Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded; and

(iii) A statement accompanies the statewide program of projects which includes for such projects the views of the metropolitan planning organization and indicates how the requirements of 23 U.S.C. 134(a) have been met; and

(4) Those projects not drawn from the annual (or biennial) element that were excluded under section 450.202(b) and are proposed to be implemented.

(c) The preparation and endorsement of the TIP, the selection of projects in accordance with this subpart, and the agreement under section 450.202(b), if any, will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a) and Section 8(c) of the UMT Act (49 U.S.C. 1607(c)).

(d) The State shall notify the appropriate metropolitan planning organizations of the 23 U.S.C 105 program actions taken on projects in each urbanized area.

§ 450.212 Program approval.

(a) Upon the determination by the Federal Highway Administrator and the

Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the planning process is in conformance with Subpart A, programs of projects and Interstate Substitution projects selected for implementation under §§ 450.210 and 450.206, respectively will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by:

(i) The Federal Highway Administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects; and

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in any case where the statewide program of projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the annual (or biennial) element.

(2) Interstate substitution nonhighway public mass transit projects included in the annual (or biennial) element will be approved by the Urban Mass Transportation Administrator.

(3) Projects proposed to be implemented under Sections 3, 5, 9, and 9A of the UMT act (49 U.S.C. 1602, 1604, 1607a and 1607a-1) included in the annual (or biennial) element will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submittal required by § 450.204(d)(1).

(4) Federal-aid urban extensions of primary projects, Interstate projects and highway bridge replacement and rehabilitation projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator.

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administrator and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR Part 630, Subpart A. These approvals will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the projects are based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(c) Approvals by the Urban Mass Transportation Administrator will be in

accordance with the provisions of this subpart. These approvals will constitute:

(1) The approval required under Section 8(c) of the UMT Act (49 U.S.C. 1607(c));

(2) A finding that the program is based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with the provisions of Section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified officially coordinated urban transportation system in accordance with the provisions of Section 3(e)(1), 3(l), or 8(c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(l) or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP in accordance with procedures in 49 CFR Part 623.

Part 613 of 49 CFR is amended as set forth below:

PART 613—PLANNING ASSISTANCE AND STANDARDS

4. Subpart A of Part 613 is revised as set forth below:

Subpart A—Urban Transportation Planning

§ 613.100 Urban transportation planning.

The urban transportation planning regulations implementing 23 U.S.C. 134 and Section 8 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607), which require comprehensive planning of transportation improvements which are set forth in 23 CFR Part 450, Subpart A, are incorporated into this subpart.

(23 U.S.C. 104(f)(3), 134 and 313; sec. 3, 5, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, 1607, 1607a and 1607a-1); secs. 174 and 177 of the Clean Air Act (42 U.S.C. 7504 and 7506); and 49 CFR 1.49(b) and 1.51)

5. Subpart B of Part 613 is revised as set forth below:

Subpart B—Transportation Improvement Program

§ 613.200 Transportation improvement program.

The transportation improvement program regulations establishing guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas which are set forth in 23 CFR Part 450, Subpart B are incorporated into this subpart.

(23 U.S.C. 106, 134(e), and 1387(b) sec. 3, k, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1002, 1004, and 1007(c)); sec. 174, and 178 of the Clean Air Act (49 U.S.C. 7504, and 7506); and 49 CFR 1.487(b) and 1.511)

(Catalog of Federal Domestic Assistance Program Numbers 20.507, Highway Research Planning, and Construction 20.509 Urban

Mass Transportation Capital Grant; 20.501, Urban Mass Transportation Capital Improvement Loan; and 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants. The provisions of OMB Circular No. A-46 regarding State and local characteristics review of Federal and federally assisted programs and projects apply to these programs.)

Issued on June 27, 1981.

E. A. Barkhart,
Federal Highway Administrator, Federal
Highway Administration.

Arthur E. Teala, Jr.,

Urban Mass Transportation Administrator,
Urban Mass Transportation Administration,
1717 New Ave., Room 6-1717, Washington, DC 20590

(FR Doc. 81-1776 Filed 6-29-81; see also
BILLING CODE 4910-01-M)

EXHIBIT 2
AGREEMENT CREATING REGIONAL TRANSPORTATION
COMMISSION OF CLARK COUNTY

THIS AGREEMENT, made and entered into by and between the STATE OF NEVADA, acting by and through its Department of Transportation, hereinafter referred to as STATE; COUNTY OF CLARK, a political subdivision of the State of Nevada, hereinafter referred to as COUNTY; the CITY OF LAS VEGAS, hereinafter referred to as LAS VEGAS; the CITY OF NORTH LAS VEGAS, hereinafter referred to as NORTH LAS VEGAS; the CITY OF HENDERSON; hereinafter referred to as HENDERSON; the CITY OF BOULDER CITY hereinafter referred to as BOULDER CITY; and the Clark County Regional Transportation Commission, hereinafter referred to as TRANSPORTATION COMMISSION.

W I T N E S S E T H

WHEREAS, STATE, pursuant to the provisions of NRS 408.245, assents to and accepts the provisions of the Federal Highway Act and all amendatory legislation; and

WHEREAS, the Federal Highway Administration, the Urban Mass Transportation Administration, the Federal Department of Housing and Urban Development and other federal agencies may have funds available to assist STATE and local governments in solving planning problems resulting from the increasing concentration of population in urban areas and to facilitate comprehensive planning for urban development including coordinated transportation systems on a continuing basis by such governments; and

WHEREAS, pursuant to NRS 277.180, STATE has power to enter into a cooperative agreement with COUNTY, LAS VEGAS, NORTH LAS VEGAS, HENDERSON, BOULDER CITY and TRANSPORTATION COMMISSION, to effectuate and carry out programs contemplated and provided by the United States Government or its various agencies, in conjunction with local programs; and

WHEREAS, pursuant to NRS 277.180, COUNTY may enter into cooperative agreements to expedite and make more efficient, planning processes with respect to construction, reconstruction, control and management of all transportation facilities; and

WHEREAS, LAS VEGAS, NORTH LAS VEGAS, and HENDERSON pursuant to the Statutes of Nevada, are special charter cities; BOULDER CITY was incorporated pursuant to NRS Chapter 267; TRANSPORTATION COMMISSION was established by NRS Chapter 373; are all

decided for their best interest, and the transportation planning process is such an interest, and

WHEREAS, pursuant to said power and authority, STATE, COUNTY, LAS VEGAS, NORTH LAS VEGAS, HENDERSON, DOULDER CITY, and TRANSPORTATION COMMISSION, enter into this cooperative agreement for the maintenance of a comprehensive, cooperative and continuing transportation planning process in Clark County with a view of maintaining transportation planning related to comprehensive planning for the area and harmonious with the citizens' desires for community development goals in a continuing planning process which will be mutually advantageous to all contracting parties; and

WHEREAS, the Regional Transportation Plan has been completed and is in the continual update phase as per the Integrated Cooperative Agreement of January 5, 1965 between the STATE, COUNTY, LAS VEGAS, NORTH LAS VEGAS, HENDERSON; and

WHEREAS, the Governor of the State of Nevada on July 1, 1981 designated TRANSPORTATION COMMISSION the official Metropolitan Planning Organization of the Clark County area, to be responsible for all transportation planning grants for the Clark County area; pursuant to the provisions of Title 23 U.S.C. 114 and Title 49 U.S.C. 1607 as amended by Federal Public Law 95-599 enacted November 6, 1978 and cited as the Surface Transportation Act of 1978; and

WHEREAS, all previous agreements, resolutions, and memorandums of understanding involving regional transportation planning are superseded by this cooperative agreement.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, and pursuant to the authority of NRS Chapter 277, it is agreed by and between the parties hereto as follows:

OBJECTIVES

The objective of this agreement is to maintain a comprehensive, continuing, cooperative transportation planning process as related to comprehensive planning; and to provide for the continual orderly development of these plans.

Regional Transportation Commission

The Clark County Transportation Study Policy Committee is hereby dissolved and the TRANSPORTATION COMMISSION shall function as the decision making board, and shall be composed of representatives selected in accordance with NRS 373 as follows:

- Two from the Board of County Commissioners of Clark County.
- Two from the governing body of the largest city in Clark County.
- One from the governing body of each additional city in the county which is a party to this agreement.

The Director of the Nevada Department of Transportation shall be an ex-officio member for participation in planning. The Division Administrator of the Federal Highway Administration shall act in an advisory capacity.

Planning Technical Committee

To foster the comprehensive and cooperative intent of transportation planning, the TRANSPORTATION COMMISSION shall be aided by a Planning Technical Committee which shall function in an advisory capacity to the TRANSPORTATION COMMISSION, and shall be composed of the same number of representatives selected in the same manner as the TRANSPORTATION COMMISSION with the following additional organizations represented each with one member; all members shall be voting members:

- Nevada Department of Transportation.
- United States Department of Transportation.
- McCarran International Airport.
- Economic Opportunity Board of Clark County.
- The private transit sector in Clark County.
- Clark County School District.
- The taxicab industry of Clark County.

Citizen Participation Program

In order for transportation planning to remain sensitive to community needs and desires, a citizen participation program shall be utilized. Various methods of providing citizen input may be employed when deemed necessary and appropriate. These may include but not be limited to town meetings, public hearings, workshops, civic groups' meeting, and newsletters. A Citizen Advisory Committee shall func-

by to the TRANSPORTATION COMMISSION, and shall be composed of more than twenty members. Members presently serving shall continue to serve until the next ensuing December 31 of an even-numbered year. Their successors shall serve for terms of two years and vacancies shall be filled for the unexpired term by the TRANSPORTATION COMMISSION.

Staff

The TRANSPORTATION COMMISSION shall maintain a planning division staff to complete the requirements of the Transportation Section of the Overall Work Program adopted by TRANSPORTATION COMMISSION.

OVERALL RESPONSIBILITIES

Transportation Planning

The TRANSPORTATION COMMISSION, as the designated Metropolitan Planning Organization, shall be responsible for the maintenance of a comprehensive, continuing, and cooperative transportation planning process as related to comprehensive planning, and as such, shall be responsible for all transportation planning grants for the study area whose boundaries shall be Clark County.

Federal-Aid Urban Boundaries

The TRANSPORTATION COMMISSION, in cooperation with STATE, shall be responsible for the development, maintenance, and approval of the Federal-Aid Urban Boundaries within the study area.

Federal-Aid Urban Street and Highway System

The TRANSPORTATION COMMISSION, in cooperation with STATE, shall be responsible for designating the project priorities on the urban system within the Federal-Aid Urban Boundaries, consistent within the guidelines governing the Transportation Improvement Program.

Transportation Improvement Program

The TRANSPORTATION COMMISSION shall be responsible for annually compiling, reviewing the planning consistency of, and adopting, the Transportation Improvement Program for the study area. The Transportation Improvement Program is a staged three to five year program of regional transportation improvement projects, estimated costs, and responsible agencies.

The TRANSPORTATION COMMISSION shall be responsible for the annual development, maintenance, adoption, and administration of the Overall Work Program as required by the 23 code of Federal Regulations, 450.115 and herein incorporated by reference. The Overall Work Program is a program budget document within which the comprehensive metropolitan planning process is defined so that federal and state planning requirements can be met. Approvals of consulting agreements shall be governed by the appropriate provisions of OMB Circular A-102 and FPMR 1-7-2.

AUDITS AND INSPECTION

The TRANSPORTATION COMMISSION shall permit the STATE and the Federal Highway Administration to audit the books, records, and accounts of the TRANSPORTATION COMMISSION pertaining to the Overall Work Program. In addition, the TRANSPORTATION COMMISSION will present to the STATE the results of any independent audit, review and or inspection of the Overall Work Program prepared by or for the TRANSPORTATION COMMISSION.

RECORD RETENTION

The TRANSPORTATION COMMISSION shall provide and maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at the administrative offices of the TRANSPORTATION COMMISSION at all reasonable times during the tenure of this AGREEMENT and for three (3) years from the date of final payment to the COMMISSION for work accomplished under the Overall Work Program. Such materials will be made available for inspection by authorized representatives of the STATE or the Federal Highway Administration, and copies thereof shall be furnished if requested.

COPYRIGHTING OF MATERIAL

THE TRANSPORTATION COMMISSION shall be free to copyright material developed under the contract. It is further agreed that the STATE and Federal Highway Administration reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work which may be accomplished under this Agreement for government purposes.

All project reports published by the TRANSPORTATION COMMISSION shall contain a credit reference to the State of Nevada, Department of Transportation and shall indicate that such report or publication has been "prepared in cooperation with the U.S. Department of Transportation, Federal Highway Administration, and the Nevada Department of Transportation."

... public ... prepared through the project, shall indicate that such report or publication has been "prepared in cooperation with the Regional Transportation Commission."

NONDISCRIMINATION

The parties hereto shall comply with all applicable requirements of the following regulations relative to nondiscrimination:

- (a) Title VI of the 1964 Civil Rights Act.
- (b) 49 Code of Federal Regulations, Part 21, "Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964."
- (c) 49 Code of Federal Regulations, Part 23, "Participation by Minority Business Enterprises in Department of Transportation Programs."
- (d) 49 Code of Federal Regulations, Part 23 Federal Register 45281 (7/13/80) "Guidance for Implementing DOT Rules Creating a Minority Business Enterprises Program in DOT Financial Assistance Programs."
- (e) 49 Code of Federal Regulations, Part 27, "Non-discrimination on the Basis of Handicap."
- (f) 23 Code of Federal Regulations, Section 710.405(b) regarding sex discrimination.

LIABILITY FOR ACTIONS OF OTHER PARTY

No party shall incur legal liability for the actions of the other under terms and conditions of this contract. Each party shall be solely and entirely responsible for its act and the actions of its employees and agents under this contract.

FINANCES

Funds from federal, state and local sources eligible to support the transportation planning process shall be administered by the TRANSPORTATION COMMISSION in accordance with the rules and regulations of the funding agencies.

The TRANSPORTATION COMMISSION shall establish a separate fund to provide funding for the transportation planning process and to match federal transportation planning funds.

The STATE shall contribute its share of the non-federal share of the total project cost, except STATE funds shall not exceed the amount appropriated and apportioned for this purpose. The TRANSPORTATION COMMISSION agrees that it will provide, from sources other than STATE or Federal funds, to cover the balance of the work defined in the Overall Work Program. The STATE's share of the costs as indicated in the Overall Work Program must be expended in the program year indicated. The STATE obligation to provide STATE funds lapses at the end of each program year as indicated in the approved Overall Work Program. All project costs shall be properly identified and shall be guided by the provisions of OMB Circular A-102, as well as the requirements of the COMMISSION and DEPARTMENT accounting systems. Eligible costs as well as methods for documenting those costs attributable to the Project contracting requirements, shall be governed by the current provision of:

- (a) Federal Management Circular 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments."
- (b) Office of Management and Budget (OMB) Circular A-102, "Uniform Administrative Requirements for Grant-in-Aid to State and Local Governments," including all applicable attachments.
- (c) Federal-aid Highway Program Manual 1-7-2, "Payment Procedures."

The TRANSPORTATION COMMISSION shall invoice STATE quarterly for expenses incurred and reimbursable from the Federal Highway Administration. The TRANSPORTATION COMMISSION shall requisition the Urban Mass Transportation Administration quarterly for expenses incurred and reimbursable therefrom.

Quarterly and year end reports accounting for the expenditure of all funds and services included as part of the Transportation Section of the Overall Work Program shall be submitted for review by the TRANSPORTATION COMMISSION.

The TRANSPORTATION COMMISSION may disburse planning monies for the purposes hereinabove set forth without submitting agreements to the other individual parties to this Cooperative Agreement.

IN WITNESS THEREOF, the parties have set their hands and affixed their seals as of the day and year indicated.

STATE OF NEVADA

COUNTY OF CLARK

William W. Raymond
Deputy Attorney General

Thalia M. Dardano
By: THALIA M. DARDANO, Chairman

ATTEST:
Loretta Bonman
LORETTA BONMAN, County Clerk

COUNTY OF CLARK
By: Thalia M. Dardano
THALIA M. DARDANO, Chairman

Date: May 3, 1983

ATTEST:
Carol Ann Hawley
CAROL ANN HAWLEY, City Clerk

CITY OF LAS VEGAS
By: William H. Biario
WILLIAM H. BIARIO, Mayor

Date: May 13, 1983

ATTEST:
Esther Jordan
ESTHER JORDAN, City Clerk

CITY OF NORTH LAS VEGAS
By: James S. Leonard
JAMES S. LEONARD, Mayor

Date: June 13, 1983

ATTEST:
Dorothy Woodbine
DOROTHY WOODBINE, City Clerk

CITY OF HENDERSON
By: Robert J. Zinn
ROBERT J. ZINN, Mayor

Date: May 6, 1983

ATTEST:
Dee E. Stone
DEE E. STONE, City Clerk

CITY OF BODEN CITY
By: Robert H. Barton
ROBERT H. BARTON, Mayor

Date: _____

General Paul P.
Main Services 4-7-83



[Handwritten Signature]
LEILA A. DEAN, DISTRICT ATTORNEY

[Handwritten Signature]
ROSE ELMORE, CHAIRMAN

DATE: March 10, 2001

APPROVED AS TO FORM:

[Handwritten Signature]
MELVIN B. WHIPPLE
Deputy District Attorney

1

UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD
PUBLIC HEARING - AUGUST 17, 1990
AMARGOSA VALLEY, NEVADA

TRANSPORTATION OF NUCLEAR SPENT FUEL
A RAIL PERSPECTIVE

ALLAN C. FISHER
DIRECTOR OPERATING RULES
CONSOLIDATED RAIL CORPORATION

TRANSPORTATION OF NUCLEAR SPENT FUEL
A RAIL PERSPECTIVE

I am grateful to the Nuclear Waste Technical Review Board for asking me to present the railroad industry's views on the movement of Spent Nuclear Fuel and high level nuclear waste over the rights of way of the nation's railroads. I am currently the Chairman of the Association of American Railroads Committee on the Transportation of Nuclear Materials by rail. The objectives of the Committee are:

- to make recommendations to the railroad industry regarding nuclear waste transportation.
- to assist the Department of Energy in developing their transportation plan.

In presenting this perspective from the railroads, I am continuing a dialogue which railroad industry representatives have participated in at many open forums on Nuclear Waste in the last few years. I believe that these discussions are vital to insure that the public perceives rail movements of Spent Nuclear Fuel as the safest and most efficient method of transportation from utilities to the repository.

While the railroads have agreed to move Spent Nuclear Fuel they are fearful that the Price Anderson Act may not cover many of the

potential claims arising from transportation incidents of Spent Nuclear Fuel. Specifically, rail incidents involving Spent Nuclear Fuel without a breach of a cask do not appear to be covered under the Price Anderson Act.

You may be thinking that if there is no release of radioactive material there should not be large economic consequences to the railroad companies.

On the contrary, the railroads believe that no mechanism yet exists to properly coordinate emergency response after an initial evacuation around any derailment involving Spent Nuclear Fuel. After it has been determined that there has been no leakage of radioactive materials, we wonder who will give authority to the railroads so that they can begin clearing the derailment. During these traffic disruptions all rail traffic may be delayed for days or weeks while the railroad line is shut down. Therefore, when we say that we are "betting our railroads" every time we move Spent Nuclear Fuel we do not consider this to be an exaggeration.

The railroad industry continues to address other issues which need to be resolved.

We object to DOE and the utility industry's perceived need for extra heavy casks and rail cars. In our view the extra heavy cask has two

obvious drawbacks. These are reduced flexibility in routing and a higher exposure to rail incidents. The lack of flexibility is due to the fact that not all rail lines can accommodate extra heavy cars. If the unforeseen happens on the primary or secondary rail route, the shipment may have to sit and wait for additional clearance on another alternate route and then possibly be moved at extremely slow speeds to permit safe transit over a rail line not maintained for these extra heavy loads. When rail lines of lesser maintenance standards are used, the potential for derailments and/or long delays increase. The extra heavy cask and car are also restricted from many auxiliary tracks and will therefore have fewer possible points that may be used as a "safe harbor." If the railroads involved must "store" this car on the main line it will delay other revenue movements of the railroad. Extra heavy cars also have the potential of more mechanical difficulties because of more moving parts, higher center of gravity, potential unequal distribution of load and less favorable cornering and stability characteristics. Therefore we have strongly recommended that the DOE standardize on a normal size cask/car combination.

For many years the AAR has recommended standards for the safest possible movement of Spent Nuclear Fuel. These standards include:

- Planning, in advance, the route of movement and using the safest routes and tracks.
- Scheduling of the train (both as to day of week and time of day).

- Surveillance of the train en route monitoring the performance of both the car and its contents as well as locomotive, idlers and rider cars.
- Controlling the speed of the train (not exceeding 35 MPH maximum with further restrictions where appropriate).
- Controlling movement of other trains being met or passed en route, where appropriate.
- Providing for emergency response, in the event of unusual occurrence en route.
- Providing for escorts (to include operating supervisor, Police and DOE experts).
- Instilling maximum public confidence in the safety of nuclear movements through sensitive areas.

We believe the rail industry can best perform its mission of handling Nuclear Spent Fuel safely by utilizing dedicated trains. We look forward to working with the DOE and the utility industry to insure that Spent Nuclear Fuel continues to be moved in the safest and most efficient manner.

UNITED STATES
NUCLEAR WASTE TECHNICAL REVIEW BOARD

ALLAN C. FISHER
DIRECTOR OPERATING RULES
CONSOLIDATED RAIL CORPORATION
ROOM 310 SIX PENN CENTER PLAZA
PHILADELPHIA, PA 19103-2959

EDUCATION

St. Lawrence University, B.A. in Economics, June 1965
Northwestern University, M.A. in Transportation, June 1970

WORK EXPERIENCE

1969 Research Economist
General Motors Research Laboratories, Warren, MI

1970-1976 Various Transportation Field Supervisory Positions
Penn Central Transportation Company

1977-1978 Division Superintendent
Consolidated Rail Corporation

1979-1983 Regional Superintendent at Pittsburgh and Indianapolis
Consolidated Rail Corporation

Nov. 1983- Director of Operating Rules - System Office
to Present Consolidated Rail Corporation

MILITARY EXPERIENCE

January 1966 - December 1967: U.S. Army Transportation Corps Officer
Received Bronze Star for meritorious
service in Vietnam.

MEMBERSHIPS

Senior Member, Institute of Industrial Engineers, Board of Directors,
Philadelphia Boys Choir & Chorale, International Association of
Railway Operating Officers, Who's Who in Finance and Industry, Who's
Who in the East, Who's Who in the World, Who's Who in Emerging Leaders
In America, Who's Who in Railroading, Association of American
Railroads Operating Rules Committee; Chairman, Transportation of
Nuclear Waste by Rail Committee

**State of Nevada
Agency for Nuclear Projects
Nuclear Waste Project Office**

Robert J. Halstead
Transportation Advisor

presentation before

**United States
Nuclear Waste Technical Review Board**

Amargosa Valley, Nevada

August 17, 1990

**NUCLEAR WASTE TECHNICAL REVIEW BOARD
SIGN-IN SHEET**

(4)

TRANSPORTATION & SYSTEMS PANEL PUBLIC HEARING
AMARGOSA VALLEY - NYE COUNTY, NEVADA
AUGUST 17, 1990

E 8/17/90

NAME	TITLE	ORGANIZATION	STREET	CITY, STATE	ZIP	PHONE
Jim Ruber	Information Specialist	S.A.F.C.	101 Convention Center 6	Las Vegas NV	89107	702 794-7769
Wayne Harris						
Frank Rensch						
Pick Dale	Representative for	NV Nuclear Waste Staff Comm.	316 Bridger Ave. Side 222	NV NV	89101	
Paul Davis	(TEACHER) Rep. for	NV Nuclear Waste Staff Comm.	5488 STANECER ST 415 VEGAS, NV 89119	NV.	89119	702 736-6903
Tom. P. Hines	Retired	Self	709 San Pina Ln	L.V. NV	89107	870-3724 702
George Younghaus		Self	P.O. Box 833 Beatty NV 89003	Beatty NV	89003	553-2392
Charles Wally		Self	Box 454 Rt 15	Amargosa	89020	312-5389
_____		_____	_____	_____	_____	_____
Doris Jackson		Stateline Saloon	RT. 15 Box 566R AMARGOSA VLY NV.	89020		372-5238
David C. Boyd	Quality Coordinator FSD/BOD - DNA	REELCO	PO Box 84 Amargosa Valley NV	89020		372-5326
Betty for Boyd		Self	✓	✓		✓

Repository Transportation Concerns

1. Unresolved Safety Issues
2. Yucca Mountain Transportation Issues
3. DOE OCRWM Transportation Program
4. Public Perception of Transportation Risks

1. UNRESOLVED TRANSPORTATION SAFETY ISSUES

- a. Relevance of Nuclear Industry's Past Safety Record
- b. Health Effects of Routine Shipments
- c. Probability of Severe Transportation Accidents
- d. Adequacy of Federal Safety Regulations
- e. Shipping Cask Performance in Severe Accident or Terrorist Attack

NUCLEAR INDUSTRY TRANSPORTATION SAFETY RECORD

- No releases since early 1960's but accidents have occurred, equipment has failed, and at least one case of attempted sabotage is known
- Number of shipments will increase dramatically
- Average length of shipments will increase significantly
- DOE's transportation safety record may not equal the nuclear utilities' record

COMMERCIAL SHIPMENTS OF SPENT FUEL IN THE UNITED STATES

1964 - 1989

8,962 Assemblies Shipped

1,861 MTUs shipped

47% by rail

53% by truck

2,576 Cask-Shipments

9% by rail

91% by truck

Source: R.B. Pope, International Experience in Cask
Design and Operations, February, 1990

1,388 Dedicated Trains
(10 casks per train, 5 containing SNF)

2,091 Rail Casks (general freight)

7,234 Truck Casks

DOE Alternative Plan - No MRS

7,879 Rail Casks (general freight)

26,600 Truck Casks

NWPO Maximum Shipment Scenario - No MRS, All Trucks

76,000 Truck Casks

ACR 8, p. 25



**SPENT NUCLEAR FUEL (SNF) AND HIGH LEVEL
RADIOACTIVE WASTE (HLW) SHIPMENTS TO A REPOSITORY
(100% TRUCK)**

Cask Capacity Assumption

	NWPO (1.0 MTU/Cask)	OCRWM (2.0 MTU/Cask)
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Base Case (70,000 MTU)

SNF	63,020	31,510
HLW	12,980	12,980
TOTAL	76,000	44,490

Maximum Shipment Case (No second repository, all defense HLW)

SNF	87,000	43,500
HLW	55,280	98,780
TOTAL	142,280	98,780

Source: NWPO 8/10/90, Based on ACR 8 Report

HEALTH EFFECTS OF ROUTINE SHIPMENTS

- Neutron and Gamma Radiation During Incident-free Transport
- Past Instances of Excess Surface Contamination
- Health Effects Assumptions (RADTRAN)

PROBABILITY OF SEVERE ACCIDENTS

- Use of Probabilistic Risk Assessment (PRA)
- RADTRAN/Transnet
 - Model Validation
 - Route-Specific Data

FEDERAL SAFETY REGULATIONS

- Regulatory Gaps
- Inadequate Enforcement

WGA RESOLUTION ON HMTA

Strict Regulation of Highly Radioactive Materials Transport

- Maintain State Authority to Designate Alternative Highway Routes**
- Apply Provisions to All Federal Shipments**
- Additional Regulations**
 - Rail Routing Guidelines**
 - Use Special Trains for Rail Shipments to Repository**
 - Operating Guidelines for Truck Shipments (Convoys, Escorts, Time-of-Day, Adverse Weather, etc.)**
 - Radiological Inspection of Casks at Origin and Destination**
 - Safety Inspections at Origin and En Route**

SHIPPING CASK PERFORMANCE

- Licensing standards may not reflect credible worst case accident or attack conditions
- Physical testing of full-scale casks is not required under current regulations.
- Potential human error

AUDIN ON MODAL STUDY

- Use of Strain as Primary Variable to Define Damage
- Inadequate Data on Accident Conditions
- Inadequate Attention to Interactive Processes
- Failure to Consider Human Error

MODAL STUDY VERSUS REPOSITORY TRANSPORTATION

- Different Spent Fuel Characteristics
- Larger Cask Payloads
- New Cask Designs and Materials
- Rail/Truck Modal Mix Uncertainties
- Different Shipment Characteristics

2. YUCCA MOUNTAIN TRANSPORTATION ISSUES

- a. General Considerations - Systems Impacts
- b. Lack of Rail Access
- c. Limited Access to Interstate Highway System
- d. Future Population Growth along Routes through the Las Vegas Valley
- e. Potential Conflicts with U.S. Air Force Operations
- f. Impact on Nevada Indian Tribes

COMPARISON OF TRANSPORTATION IMPACTS FOR 1ST REPOSITORY CANDIDATE SITES

Impact Issues

Potential Sites

	Davis Canyon, Utah	Deaf Smith, Texas	Hanford, Washington	Richion, Mississippi	Yucca Mountain, Nevada
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System Impacts of Spent Fuel Shipments from the MRS Facility to the Repository *

Total Cask Miles for Shipments

100-ton Casks (one-way million miles)	20.6	15.3	25.0	6.3	26.3
150-ton Casks (one-way million miles)	6.7	5.0	8.7	2.1	11.2

Total Transportation Costs

100-ton Casks (million 1985 dollars)	881	771	876	509	974
150-ton Casks (million 1985 dollars)	386	344	431	252	569

Nonradiological Accident Risk**

Injuries	216	156	230	57	266
Fatalities	20	15	22	5	25

* Assumes Oak Ridge, TN location for MRS; all spent fuel shipped to the repository from the MRS by dedicated trains; includes casks carrying secondary wastes from rod consolidation at the MRS

* * Assumes shipment in 100-ton casks, spent fuel shipments only

Source: ACR 8, based on DOE, 1986a, 1986b, 1986c, 1986d, 1986e

**COMPARISON OF TRANSPORTATION IMPACTS
FOR 1ST REPOSITORY CANDIDATE SITES**

<u>Impact Issues</u>	<u>Potential Sites</u>				
	Davis Canyon, Utah	Deaf Smith, Texas	Hanford, Washington	Richion, Mississippi	Yucca Mountain, Nevada
Proximity to National Transportation Network					
Nearest Mainline Railroad (miles)	74	25	51	17	100
Nearest Alternative Carrier Mainline Railroad (miles)	NA	40	101	26	265
Nearest Interstate Highway (miles)	89	14	28	26	100
Nearest Alternative Route Interstate Highway (miles)	198	200	72	84	208
Minimum Requirements for Access to the National Transportation Network					
<u>Rail Access</u>					
New Construction (miles)	39	26	3	26	100
Cost (million 1985 dollars)	142	21	6	16	151
<u>Truck Access</u>					
New Construction (miles)	25	1	3	4	16
Upgrading (miles)	0	4	0	23	0
Cost (millions of 1985 dollars)	79	2	6	9	12

Source: ACR 8, based on DOE, 1986a, 1986b, 1986c, 1986d, 1986e

YUCCA MOUNTAIN TRANSPORTATION CONSIDERATIONS

Site Distance from National Transportation Network

Rail

· Nearest Mainline Railroad - 100 miles

Nearest Alternative Mainline - 265 miles

Truck

Nearest Interstate Highway - 100 miles

Nearest Alternative Interstate - 208 miles

Source: ACR 8, p. 54

3. DOE OCRWM TRANSPORTATION PROGRAM

State of Nevada Recommendations

- a. Revise Mission Plan and Transportation Plan
 - (a) Program Assumptions
 - (b) Sensitivity Analysis

- b. Redirect OCRWM Cask Program
 - (a) Systems Analysis
 - (b) Dual Purpose Casks

- c. Implement NWPAA Section 180(c)
 - (a) Systems Planning
 - (b) Corridor State Participation

4. Public Perception of Transportation Risks

- a. Potential Adverse Socioeconomic Impacts
- b. Concern About Accidents
- c. Concern About Terrorism and Sabotage

Public Concern - SAFETY

Highway and Rail Accidents Will Occur in
Transporting the Wastes to the Repository

	<u>Statewide</u>	<u>Nye County</u>
Somewhat Agree	40.8%	39.2%
Strongly Agree	36.6%	24.0%

Source: November 1989 State of Nevada Telephone Survey

Public Concern - SABOTAGE/TERRORISM

Shipments of Nuclear Wastes Can be Made Safe
from Sabotage or Attack by Terrorists

	<u>Statewide</u>	<u>Nye County</u>
Strongly Disagree	40.4%	23.0%
Somewhat Disagree	21.0%	26.0%

Source: November 1989 State of Nevada Telephone Survey

002607

**NUCLEAR WASTE TECHNICAL REVIEW BOARD
SIGN-IN SHEET**

TRANSPORTATION & SYSTEMS PANEL PUBLIC HEARING
AMARGOSA VALLEY - NYE COUNTY, NEVADA
AUGUST 17, 1990

8/17/90

NAME	TITLE	ORGANIZATION	STREET	CITY, STATE	ZIP	PHONE
Walter Wilfenhaus	Foster	Peace Camp	4465 Devin Circle	Las Vegas NV	89108	648-1575
John P. Hogeman	Manager - Special Projects	SWRI	6220 Culebra	San Antonio TX	75228	512-522-5152
Regil Getto	State Senator	Nevada Cong	1400 Lovelock Blvd	Fallon, NV	89406	702-423-3544
Steve Bradhurst	Nye County Representative	Nye Co.	P.O. Box 1510	Reno, NV	89505	702-323-4144
C. Douglas	City of Las Vegas	City of LV	400 E. Stewart St	Las Vegas, NV	89101	702-799-6669
Steve Copeland	Town Board	A.V.	401 W.	Amargosa Valley NV	89050	372-5258
Paul [unclear]	J. King Valley	in Park	PO Box 77	Pahrump	89041	727-5102
EVE FERLISON	ATTORNEY	US DOE	1000 INDEPENDENCE AVE	WASH, DC	20585	581-6847
Eva Fishel	Reporter	Gazette	St. Rt. 15 Box 805	Amargosa Vly.	89020	372-5244
BOB J. FISHEL	AMARGOSA VLY PLANNING BOARD	AMARGOSA	ST. RT 15 BOX 805	AMARGOSA VLY	89020	372-5244
DENNIS BECHTEL	COORDINATOR	CLARK CO PLANNING	225 BRIDGER AVE	LAS VEGAS NV	89014	455-4181
TORV HANSEN	ENG SPEC.	CLARK COUNTY	225 BRIDGER	LAS VEGAS NV	89014	455-4181

**NUCLEAR WASTE TECHNICAL REVIEW BOARD
SIGN-IN SHEET**

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TRANSPORTATION & SYSTEMS PANEL PUBLIC HEARING
AMARGOSA VALLEY - NYE COUNTY, NEVADA
AUGUST 17, 1990

DATE 8/17/90

NAME	TITLE	ORGANIZATION	STREET	CITY, STATE	ZIP	PHONE
Jon Cashwell	Senior Member, Tech Staff	Sandia Nat'l Labs	PO Box 5800	Albuquerque N.M.	87185	(505) 845-8101
DIANA HAMELMANN		Citizen	4895 LaFonda Dr	LV NV	89121	
R. diBartolo	Administrator, UNLV Trans. Research Center	→ →	College of Engineering 4505 Maryland Pkwy	Las Vegas NV	89154	(702) 739-1362
JERRY DUKE	PRINCIPAL TRANSPORTATION PLANNER	CLARK COUNTY	225 BRIDGEWAY AVE	LAS VEGAS NV	89103	702 455-4181
DANIEL E. HAYMOND	CONSULTANT	WESTON	955 L'Enfant Plaza, S.W.	Washington D.C.	20024	202 6466600
LISIE LOWE		AMARGOSA VALLEY COMM	BOX 400 E	AMARGOSA	89020	372-5233
JANE MORRISON	REPORTER	(Las Vegas Review-Journal)	PO Box 70	Las Vegas, NV	89125	702 383-0275
BOB HALSTEAD	TRANSPORTATION ADVISOR	NW PO STATE OF NEVADA	CAPITAL COMPLEX	CARSON CITY, NV	89710	702 687-3744
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DARWIN MORGAN	Public Affairs Officer	YMP/DOE	101 CONVENTION CTR DR	LAS VEGAS, NV	89121	702- 794-7582
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AMARGOSA VALLEY - NYE COUNTY, NEVADA
AUGUST 17, 1990

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Bill King, III	Regional Director	State of Tenn.	357 W. of Hill Hall	Knoxville, TN	37494	615 971-5255
Berry/Hamburger	Transportation Eng.	SAC	800 Oak Ridge Trpk	Oak Ridge TN	37830	(615) 481-4629
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Walt Gilman	.	Amargosa Town	Grasshopper Road	Nevada	89020	372-5292
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Lee G. Gibson	Planning Coordinator	RTC	301 E. Clark Suite 300	Las Vegas, NV	89101	702- 455-4481
Rose Turner		AME	301 E. Clark Suite 300	Las Vegas, Nevada	89101	702 455-4481
Ken Garry	SELF		P.O. Box 1	AMARGOSA NV	89021	702 372-5254
Gene Johnston	"			Amargosa Valley	89020	372 5507
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