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Office of the  
Commissioner

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September 2, 2014

U.S. Department of Transportation  
Docket Management Facility  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Docket Clerk:

Re: Docket No. FHWA-2013-0037

The Connecticut Department of Transportation (Department) is pleased to provide the enclosed comments on the Federal Highway Administration's (FHWA) and Federal Transit Administration's (FTA) jointly published "Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning; Proposed Rule" (NPRM), published in the Federal Register on June 2, 2014.

These comments reflect the Department's response to the proposed changes included in the planning NPRM, as well as addresses the various FHWA and FTA requests for comment.

In addition to these comments, the Department strongly supports and played an active role in the development of the American Association of State Highway and Transportation Officials' (AASHTO) comments that were submitted to the Federal Docket on August 13, 2014. The Department supports the AASHTO comments as they address principal areas important to state Department of Transportation. In addition, the AASHTO comments also address each of the major sections and subsections of the NPRM, respond to the questions specifically asked by FHWA and FTA, and suggest specific changes to the NPRM text.

The Department also supports the letter that AASHTO submitted to US DOT on August 13, 2014 that requests an extension to the commenting period of this planning NPRM, such that there is sufficient overlap with the forthcoming Planning and Environmental Linkage NPRM. Like AASHTO, the Department appreciates US DOT consideration in this matter. We appreciate the opportunity to provide comments and look forward to working with FHWA and FTA in the implementation of the final rules.

If you would like to discuss the issues raised in this letter, please contact Mr. Thomas Maziarz, Bureau Chief, Bureau of Policy and Planning at (860) 594-2002.

Sincerely,

A handwritten signature in black ink, appearing to read "James Redeker". The signature is fluid and cursive, with a long horizontal stroke at the end.

James Redeker  
Commissioner

Enclosure

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## Preface

The Connecticut Department of Transportation (Department) would like to preface the following comments by highlighting two critical areas. The first critical area addresses the need for the United States Department of Transportation (USDOT) to clarify and emphasize key terms to allow for States and Metropolitan Planning Organizations (MPOs) maximum flexibility in implementing the proposed planning regulations. The second critical area addresses the need for USDOT to best coordinate the implementation of this proposed planning rule with the other inter-related proposed rules.

1. The Department agrees with the American Association of State Highway and Transportation Officials (AASHTO) comments that address the difference between "shall" and "should." "Shall" means that something is required. "Should" conveys a recommendation or encouragement, which may or may not be a "best practice" but is not a requirement. Like AASHTO, the Department prefers "should" to "shall" and also prefers such language as "may, but is not required to..." compared to "shall" and strongly urges the rulemaking to use "shall" only where required by the law.
2. The Department also supports AASHTO's position that it is critical that all of the new performance management requirements, whether they are related to the national-level performance measures, performance-based planning process or asset management plan requirements, have a single effective date. It is also critical that the planning requirements be coordinated with the implementation of other performance management requirements in other rules. Both of these are important so that States and MPOs are not having to establish targets for different time periods for different measures and incorporating targets for some measures into the statewide planning process but not others.

## Comments on Proposed Changes to Planning Regulations

The Notice of Proposed Rulemaking (NPRM) proposes to update the statewide and metropolitan transportation planning regulations to reflect changes made in Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21). The changes address six main topics:

1. Performance-Based Planning and Programming
2. Planning in Non-Metropolitan Areas
3. MPO Membership
4. Scenario Planning
5. Programmatic Mitigation Plans
6. Planning – National Environmental Policy Act (NEPA) Linkage

The following are the Department's comments that address each of the proposed changes:

### 1. Performance-Based Planning and Programming

#### Phase-In of New Requirements

The Department supports AASHTO's position that USDOT should consider additional flexibility for State Department's and MPOs in complying with the two year phase-in requirements outlined in Sections 450.226 and 450.340 for developing and updating their planning documents to the new planning regulations.

#### Linking Targets to Investments in the Statewide Transportation Improvement Program (STIP)

The Department supports AASHTO's position regarding Section 450.218(r) that the States should have discretion regarding a "discussion of the anticipated effect of the statewide transportation improvement program [not projects] toward achieving the performance targets." The Department also supports AASHTO's proposed revision to this section, as included in their comments and shown below.

*"A statewide transportation improvement program shall include, to the maximum extent practicable, a discussion of the anticipated effect of the statewide transportation improvement program toward achieving the State's Federally-required performance targets, linking investment priorities to those performance targets. This discussion does not require a State to include additional information on individual projects or to link individual projects with specific performance measures."*

#### Setting of Targets – “Coordination” Requirement

When coordinating targets with MPOs, the Department supports AASHTO’s position that Sections 450.206 and 450.306 provides flexibility to State Department’s and MPOs in establishing targets between the two that are either the same or complementary. In Connecticut, since the state owns an overwhelming majority of the transportation systems affected by the MAP-21 performance rules (i.e. National Highway System (NHS), Primary Freight Network, Rolling Stock, etc.) and collects, stores and analyzes most of the data associated with these transportation systems, it will be the responsibility of the Department to take the lead in developing and coordinating a framework for target setting. Through this framework, the Department will develop an open process to share data with the MPOs and the rural regions.

#### Inclusion of Targets in Transportation Plans

The Department understands that MAP-21 requires goals, objectives, performance measures and targets to be integrated in the development of various federally required documents also outlined in MAP-21. However, the requirement to include these elements in “other” transportation plans and processes is not outlined in MAP-21 but are currently required in the proposed regulations outlined in sub-section 450.208(g)(6). Like AASHTO, the Department believes that the current wording of this sub-section is too broad and that USDOT should eliminate the examples of and references to “other transportation plans”. USDOT should also make clear that it is the State that determines whether any “other” State plan or process is required to be integrated into the Federally-required planning process.

#### Revisions to Metropolitan Planning Agreements

The Department agrees with AASHTO that many of the new performance elements listed in Section 450.314 that are proposed to be included in metropolitan planning agreements are overly prescriptive and beyond what is necessary for such agreements. In most cases, these elements can more easily be addressed (and more quickly changed if necessary) in less formal documents such as MPO operating procedures or the Unified Planning Work Programs (UPWP).

The Department supports added flexibility regarding section 450.314 as outlined by AASHTO in their proposed revision which was included in their comments and shown below.

*“The MPO, the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the State(s), and the providers of public transportation*

*serving the MPA. To the extent possible, a single agreement between all responsible parties should be developed. The written agreement(s) shall include specific provisions for cooperatively developing and sharing information related to the development the metropolitan transportation plan (see § 450.324) and the TIP (see § 450.326), and development of the annual listing of obligated projects (see § 450.334). The written agreements may also include provisions for cooperatively developing and sharing information related to transportation systems performance data, the selection of performance targets, the reporting of performance targets, the reporting of system performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the asset management plans for the NHS.”*

In Connecticut, the Unified Planning Work Program (UPWP) outlines tasks with the MPOs to do transportation planning, which also includes transit planning. However, the MPOs should have the flexibility to develop a separate agreement with the transit providers to accomplish transit planning, if necessary.

## 2. Planning in Non-Metropolitan Areas

### “Consultation” Requirement Changed to “Cooperation”

The Department supports the new statutory requirement included in MAP-21 and the proposed planning regulations which retains the State’s decision-making authority in nonmetropolitan areas, but requires states to work more closely with nonmetropolitan local officials in the development of the long-range statewide transportation plan and the STIP. This change in the statutes only codifies what the Department already does and has been doing here in Connecticut for many years.

### Designation and Duties of Regional Transportation Planning Organizations (RTPO)

Like AASHTO, the Department supports the language included in MAP-21 and the proposed planning regulations regarding the discretionary nature for states to decide whether to establish or not establish RTPOs in nonmetropolitan areas. In Connecticut, similar types of organizations (Councils of Governments (COG)) have existed throughout the state for many years, including in all nonmetropolitan areas. Although not officially designated as RTPOs, the Department has had a long-standing working relationship with these COGs as the governing body in rural areas to conduct transportation planning and programming. The Department has always cooperated with these COGs in the development of the long-range statewide transportation plan and the STIP. With the additional requirements and duties for RTPOs and no additional Federal funding to cover these, the Department will not be establishing any RTPOs at this time.

### 3. MPO Membership

#### Requirement to Include Public Transportation Agency on MPO Board

Like AASHTO, the Department agrees that any additional regulations on MPO structure or governance that go above and beyond what is included in the statutes per MAP-21 will likely have unintended adverse consequences. Therefore, the Department strongly recommends that the regulations outlined in Section 450.310 stick closely to the provisions included in 23 United State Code (USC) 134 in order to ensure that MPOs have maximum flexibility in determining how they are constituted and how they operate.

The Department supports the joint policy guidance published by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) on June 2, 2014 which addresses public transportation representation on MPO policy boards. This guidance proposes that providers of public transportation should have equal decision-making rights and authorities as other officials who are on the policy board of an MPO that serves a Transportation Management Area (TMA). However, it is up to the MPO, in cooperation with providers of public transportation, to determine how this representation will be structured and established.

### 4. Scenario Planning

#### Option to Conduct "Scenario Planning" in Metropolitan Areas

The Department supports the option outlined in Section 450.324 for MPOs to use scenario planning during the development of their metropolitan transportation plans.

#### New Definition of "Scenario Planning"

The Department supports the new proposed definition of scenario planning as outlined in Section 450.104 and shown below.

*"Scenario Planning means a planning process that evaluates the effects of alternative policies, plans and/or programs on the future of a community or region. This activity should provide information to decision makers as they develop the transportation plan."*

### 5. Programmatic Mitigation Plans

The Department is generally supportive of the new statutory framework for programmatic mitigation plans outlined in 23 USC 169 as well as in Sections 450.214

and 450.320 of the proposed regulations. Both the statutes and the proposed regulations provide Department's and MPOs with the option of developing programmatic mitigation plans as part of the planning process for use during environmental reviews. Adding programmatic mitigation plans to the statutes and regulations codifies the Department's current practice.

Furthermore, the Department also strongly supports AASHTO's recommended revisions or areas of enhancement, to the programmatic mitigation plan requirements addressed in Sections 450.214 and 450.320. These recommendations and proposed changes are listed below.

- *Preserve the flexibility provided in the statute for States and MPOs to develop programmatic mitigation plans. It should be a voluntary decision for States and MPOs whether to develop these plans at all and, for those that choose to develop them, they should be allowed to develop programmatic mitigation plans within or outside the statewide and metropolitan planning processes.*

*Accordingly, revise Sections 450.214(b) and 450.320(b) to read as follows:*

*"If a State [or MPO] chooses to develop a programmatic mitigation plan then it may be developed as part of the statewide [or metropolitan] transportation planning process,..."*

- *Clarify that the contents of the programmatic mitigation plans are not limited to the listed items. The Department and MPOs should have the flexibility to include additional information and considerations into their programmatic mitigation plans.*
- *Expand the inventory of environmental resource banks for impacted resource categories to include storm water banks.*
- *Clarify and expand "resources" under the Programmatic Mitigation Plan section. Recommend separating "threatened or endangered species" and "critical habitat" (the NPRM refers to "threatened and endangered species critical habitat"). We recommend changing this to "threatened and endangered species, and critical habitat." These are separate issues with the United States Fish and Wildlife Service (USFWS) and are dealt with separately under consultation. Plus, different resource agencies have different designations for critical habitat under their programs. In addition, we recommend adding archeological resources to the list of resources.*

*Accordingly, revise Section 450.214(a)(2) as follows:*

*"2. Contents. The programmatic mitigation plan may include, but not be limited to:*

*(ii) An identification of economic, social, and natural and human environmental resources within the geographic area that may be impacted and considered for mitigation. Examples of these resources include wetlands, streams, rivers, storm water, parklands, cultural resources, historic resources, farmlands, archeological resources, threatened or endangered species, and critical habitat. This may include the identification of areas of high conservation concern or value, and thus worthy of avoidance;*

*(iii) An inventory of existing or planned environmental resource banks for the impacted resource categories such as wetland, stream, storm water, habitat, species, and an inventory of federally, State, or locally approved in-lieu-of-fee programs;"*

- *Preserve existing authorities to develop programmatic mitigation plans. States and MPOs should have the flexibility to pursue developing programmatic mitigation plans under existing authorities.*

*Accordingly, revise section 450.214(e) as follows:*

*"Nothing in this section limits the use of programmatic approaches for reviews under National Environmental Policy Act (NEPA) or the development of programmatic mitigation plans under existing authorities."*

## **6. Planning – NEPA Linkage**

The Department understands that a separate proposed rulemaking will be published to add new subsections under 23 CFR 450.224 and 23 CFR 450.338 that addresses the authority for the NEPA process to adopt analysis and decisions made during the transportation planning process. The Department supports the letter that AASHTO submitted to USDOT on Wednesday August 13<sup>th</sup>, 2014 that requests an extension to the commenting period for the Planning NPRM such that there is sufficient overlap with the forthcoming Planning and Environmental Linkage NPRM that will be a supplemental rule to the Planning NPRM. Like AASHTO, the Department appreciates USDOT consideration in this matter and looks forward to providing FHWA and FTA with a comprehensive set of comments on both NPRMs.

**Target Setting:**

*Preface* - The Department supports AASHTO's position in that Target setting is one of the most unknown areas of the MAP-21 performance management provisions and that we must proceed with implementation in a careful manner in order to mitigate as many unintended consequences as possible.

**1. What obstacles do states, MPO and transit providers foresee to the coordination among them that is necessary in order to establish targets?**

In Connecticut, the Department foresees the need to take the lead in target setting. Since the state owns an overwhelming majority of the transportation systems affected by the MAP-21 performance rules (i.e. NHS, Primary Freight Network, Rolling Stock, etc.) and collects, stores and analyzes most of the data associated with these transportation systems, it will be the responsibility of the Department to take the lead in developing and coordinating a framework for target setting. Through this framework, the Department will develop an open process to share data with the MPOs and the rural regions.

A second reason for the Department to take the lead is that MPOs and transit providers in Connecticut are small. They oftentimes lack the technical capacity for an active performance management program, and they lack experience in target-setting and performance management.

The Department supports AASHTO's position that Sections 450.206 and 450.306 provide flexibilities to State Department's and MPOs in establishing targets between the two that are either the same or complementary. However, in order to best develop coordinated targets, the Department, MPOs and transit providers need to establish the same performance methodology for target setting. The Department will play a lead role in establishing guidance to the MPOs and transit providers on such methodology. The Department will also be looking to FHWA and FTA as well as to AASHTO and to other states for additional guidance. It is important for this coordination process to begin early.

In order to coordinate targets on the local system, data collection will be a major challenge that needs to be addressed by the MPOs with their local members. MPOs will need to financially plan in their work programs for the data collection and

development of technical expertise to collect, analyze, and set targets within their budgets, if they choose to set targets on the local system. There needs to be uniform decisions as to who will gather what data and how. There needs to be an agreement sought on the actual target, an agreement on the source of data for measuring progress on the target and the ability to share the data in a uniform and accessible manner. All of which the state will take a lead in developing guidance on.

**2. What mechanisms currently exist or could be created to facilitate coordination?**

The Department facilitates regularly scheduled teleconferences and meetings with all the MPOs and rural regions on a monthly and quarterly basis. The Department also does the same with each of the transit providers on a quarterly basis. The Department, MPOs, and transit providers are considering the development of working groups or additional meetings over the coming year(s) to specifically discuss any issues. It may also be necessary to implement and facilitate the coordination and communication of new performance management requirements.

**3. What role should FHWA and FTA play in assisting States, MPOs and transit providers in complying with these new target-setting requirements?**

The Department requests that FHWA and FTA grant flexibilities and provide guidance to states, MPOs and transit providers wherever possible to implement the new target-setting requirements.

The Department requests that FHWA and FTA continue to provide the necessary oversight and policy direction to states, MPOs and transit providers in implementing any new requirements. The continual publication of clear and concise guidance as well as examples of best practices to follow in other states is always appreciated.

The Department appreciates the regulatory impact analysis that FHWA/FTA recently conducted regarding financial implications of the new performance-based planning and programming requirements on State Department's, MPOs, and transit providers.

The Department would encourage FHWA/FTA to continue to conduct these regulatory impact analyses regarding any new requirements imposed on the state Department's, MPOs, and transit providers. Wherever possible, the Department also encourages FHWA/FTA to conduct more state-specific regulatory impact analysis.

Many of the new performance costs imposed on the state Department's, MPOs and transit providers involve data collection efforts. The Department requests flexibility,

to the greatest extent possible, by FHWA and FTA to allow state Department's, MPOs and transit providers the ability to use Federal funds for all the necessary data collection efforts involved with the new requirements.

**4. What mechanisms exist or could be created to share data effectively amongst States, MPOs and transit providers?**

The Department supports the creation of more open source data and long term data to be housed online in data repositories for state Department's, MPOs and transit providers to access and share for the purposes of setting performance targets, prioritizing programs, and making better performance-based decisions. The Department also supports AASHTO's position that USDOT should look to the results of the AASHTO SCOP/SCOPM Joint Technical Meeting all-day peer exchange in June 2014 that brought together state Department's and MPOs to discuss target setting issues, including data sharing efforts. The results of this effort have been formalized into a document and submitted to USDOT.

**5. For those States, MPOs and transit providers that already utilize some type of performance management framework, are there best practices that they can share?**

The Department will be looking to FHWA and FTA as well as AASHTO and other states for guidance.

## Regional Planning Coordination Improvements:

Preface – The Department supports AASHTO's comment that suggests USDOT work with state Department's and MPOs once the rules have been finalized to develop resource documents and best practice guides to support regional planning coordination as it relates to performance management implementation.

- 1. The FHWA and FTA seek public comment on how regional planning coordination can be further improved in situations where multiple MPOs serve one or several adjacent urbanized areas.**

For transportation planning and programming purposes, the Department supports the start of a coordinated effort with local officials to reorganize the boundaries of MPOs so that they more closely resemble TMA boundaries and/or major transportation corridors that meet a minimum population threshold. This effort would help address the issue of coordination as a majority of the transportation funding for local areas comes to the state by urbanized areas and must be used for corridor-based transportation systems that operate across multiple local jurisdictions.

Changing the board structure of MPOs to comply with the new federal requirements that transit representatives and state officials are on the board and ensuring that they have equal decision-making rights and authorities should help improve coordination, as these new members will also serve areas outside of the MPO boundaries.

Where applicable, the Department supports efforts of MPOs to work on more joint projects and studies with other MPOs that share urbanized areas and transportation corridors. This is something that the Department will be working with the MPOs on to include in their future UPWPs.

- 2. The FHWA and FTA seek public comment on additional mechanisms that could be created to improve regional coordination in situations where there may be multiple MPOs serving a common urbanized area or adjacent urbanized areas.**

The Department supports AASHTO's position on this matter which is shown below.

*AASHTO suggests that USDOT work with state Department's and MPOs once the rules have been finalized to develop resource documents and best practice guides to support regional planning coordination as it relates to performance management implementation.*

## Public Transportation Representation on MPO Boards:

Preface – The Department supports AASHTO's position on this matter which is included in AASHTO's comments and shown below.

*The preamble of the NPRM discusses the makeup of MPOs that serve TMAs. AASHTO recognizes the importance of ensuring that MPOs are constituted in ways that ensure they are well equipped to tackle the challenges associated with the transportation planning responsibilities required of them. Since many MPOs are organized and operate under state law, and their makeup may be a carefully negotiated issue, any regulations that go beyond the specific requirements in law will restrict the ability of state and local policymakers to establish a governance structure that best suits their unique needs. AASHTO recommends that the regulations stick closely to the provisions in 23 USC 134 in order to ensure that MPOs have maximum flexibility in determining how they are constituted and how they operate. Any additional regulations on MPO structure or governance will likely have unintended adverse consequences.*

### 1. Should the regulations clarify who appropriate “officials” may be?

The Department strongly encourages FHWA/FTA to address this issue of appropriate officials as a matter of **policy guidance**, but not to be addressed as a regulation or a requirement in the final rulemaking, as these added regulations will likely lead to unintended adverse consequences in Connecticut and many other states.

The Department supports the policy guidance that FHWA/FTA jointly published to the Federal Docket on June 2, 2014 that addresses the topic of who should be considered an appropriate transit provider official to be included on the policy boards of MPOs serving TMAs. The Department understands that this policy guidance is not a requirement by FHWA/FTA, but rather a recommendation.

The Department agrees with FHWA/FTA's policy guidance that:

“A representative of providers of public transportation should be an elected or appointed member of the provider's board of directors or a senior officer of the provider, such as a chief executive officer or a general manager.”

The Department supports FHWA/FTA to develop similar policy guidance that also addresses the topic of who should be considered an appropriate state official to be included on the policy boards of MPOs serving TMAs.

This policy guidance would serve as a framework to help MPOs and state officials determine who the appropriate state official should be on the MPO policy board

**2. Can staff members or other alternates be substituted for the “officials” identified in paragraph (d)(1)?**

The Department supports the position that staff members or alternates should be able to be substituted for the officials on MPO policy boards. However, the Department supports AASHTO's position that this is a local issue to be resolved at the local level or statewide level and that any Federal regulations on this matter, would likely have unintended adverse consequences.

**3. Can an official in paragraph (d)(1) serve in multiple capacities on the MPO board, e.g., can a local elected official or State official serve as a representative of a major mode of transportation?**

The Department believes that federal regulations on this issue may create more problems than it solves. Therefore, the Department supports flexibilities on this issue for MPOs to resolve themselves.

**4. Should the regulations provide more specificity on how each of the officials identified in paragraph (d)(1) should be represented on the MPO?**

The regulations should not provide more specificity on how each of the officials should be represented as it would likely lead to unintended adverse consequences. However, the Department does support the future publication of Federal guidance on this matter, separate from rulemaking.

**5. Should the regulations include more information about MPO structure and governance?**

The regulations should not but additional Federal guidance separate from rulemaking would be welcomed.

## Information Collection and Baseline Burden Analysis:

Preface – The Department supports AASHTO's position on this matter described below.

AASHTO submitted a comment letter regarding burden associated with complying with the proposed rule. Please see *AASHTO Response to Notice of Request for Revision of a Currently Approved Information Collection* submitted to USDOT on January 29, 2014. In that letter, AASHTO commented that the Estimated Annual Burden of 8017 hours documented in the Notice is too low. This estimate is equal to approximately three full time employees. In Michigan, they estimated that 8,000 person hours were used in one year on the long-range plan update let alone updating other documents and plans. In states such as Florida, one of their MPOs provided an estimate of 15,608 hours for their area, nearly double the estimate provided in the Notice. Moreover, the estimate did not include required interagency consultation and involvement of federally specified stakeholder groups—each of which takes considerable time.

Given there are wide variations in labor wage rates and overhead rates among state Department's and MPOs, AASHTO would encourage the cost burden analysis to be state and MPO specific. States that have a large percentage of roadways and transit facilities will require greater resources to carry out this effort. In New Jersey, the addition of over 600 formerly county and local lane miles to their National Highway Network is one example of the additional cost burden that New Jersey Department of Transportation is faced with utilizing additional resources for data collection on. Given the additional cost expected we encourage FHWA/FTA to do a state specific analysis and provide additional funds to states and MPOs to carry out the requirements proposed in this NPRM.

### 1. Whether the proposed collection is necessary for the Department's performance

The Department has no comment at this time.

### 2. The accuracy of the estimated burdens

The Department does not agree with the accuracy of the estimated burdens laid out by FHWA/FTA in their regulatory impact analyses. FHWA/FTA says that the new planning and performance management requirements imposed on state Department's, MPOs and transit providers will increase burden costs at an average of 15 percent. Depending on the region, some MPOs and transit providers may need to increase staff sizes to incorporate the new performance management

requirements. The Department may need to do the same as well. Therefore, the Department believes that these new costs are likely to be much higher than a conservative 15 percent increase and could increase costs as high as 50 percent in some of the larger regions and at the statewide level.

The Department agrees with AASHTO and encourages FHWA/FTA to do a state and MPO specific cost burden analysis and provide additional funds to states and MPOs to carry out the requirements proposed in this NPRM.

**3. Ways for the Department to enhance the quality, usefulness, and clarity of the collected information**

The Department has no comment at this time.

**4. Ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.**

The Department has no comment at this time.