

bridge project, the Coast Guard also works closely with state and national agencies with expertise in historic resources. In addition, if an alteration project will affect Indian lands, the Coast Guard will invite the governing body of the Indian tribe to be a consulting party and to concur in any decision.

In regard to Interior's suggestion as to the implementation of Section 147 of the Federal Aid Highway Act of 1976 (Pub. L. 94-280), the Coast Guard has a memorandum of understanding with the Federal Highway Administration (FHWA) concerning the preparation of environmental documents. Through this agreement, the Coast Guard and the FHWA have agreed that when a highway section requires an action by both FHWA and Coast Guard, the FHWA will normally serve as the lead agency for the preparation and processing of environmental documents.

A comment was received from a publisher of marine education textbooks who objected to proposed § 116.10 on the grounds that it is permissive in nature and fails to require the District Commander to review files, or to conduct an investigation relative to a formal complaint that a bridge unreasonably obstructs navigation. Coast Guard policy is to place requirements on its District Commanders in internal directives, such as Commandant Instructions and program manuals, and not in the Code of Federal Regulations. The procedures for the District Commander's Preliminary Review of a written complaint, including a mandatory requirement that a District Commander conduct a Preliminary Review any time a written complaint is received, are contained in Chapter 6 of the *Bridge Administration Manual*. Section 116.10 of the final rule now describes the procedures a District Commander will use to review any written complaint received about a bridge.

Two comments were also received from railroad trade associations. One of the association's member railroads operates 75 percent of the line-haul mileage, employs 89 percent of the workers, accounts for 91 percent of the freight revenue of all railroads in the United States, and operates almost all of the nation's inter-city passenger trains. The other is a national association of railroad professionals involved in the construction and maintenance of railroad bridges. Both of these comments objected to the omission in the proposed rule of language, found in the bridge statutes and the previous codification of part 116, that the Coast Guard consider the needs of rail and

highway traffic, as well as the needs of navigation, in determining what alterations to a bridge must be undertaken by the bridge owner. The Coast Guard agrees with the comments. This language appears in the final rule in § 116.01(e)(1).

The comment from the trade association representing railroad professionals involved in the construction and maintenance of railroad bridges also expressed concern with the language of proposed § 116.20(b). The association raised the issue of the railroad bridge owner's responsibility to totally fund alterations if the railroad bridge does not meet the benefit/cost ratio criteria used to determine eligibility for funding under the Truman-Hobbs Act. Using a benefit/cost ratio to determine eligibility for Truman-Hobbs funding and as justification before Congress for this funding is not new. It is contained in the *Bridge Administration Manual* and is now being mentioned in 33 CFR 116.30 for purposes of clarification. Before a bridge alteration is ordered and funded under the Truman-Hobbs Act, a thorough study and analysis relevant to the unreasonableness of the bridge in question must be undertaken. The study must clearly demonstrate that the navigational benefits which would accrue as a result of the alteration would at least equal the cost of the alteration and, therefore, warrant such a public expenditure for an Order to Alter to be issued. If a bridge falling under the auspices of the Truman-Hobbs Act is statutorily declared to be an unreasonable obstruction to navigation, an Order to Alter will be issued whether the bridge meets the benefit/cost ratio criteria or not. The United States will pay a proportionate share of the cost of the alterations.

The Coast Guard is also making a number of changes in wording to the final rule as a result of its internal review and input from the bridge program's field and Headquarters personnel in response to the NPRM. These changes are not substantive. They merely clarify, reword, and provide additional details of the Coast Guard's procedures and are discussed below.

Section 116.01 has been expanded from the NPRM to provide an introduction and overview of the process the Coast Guard uses to determine whether a bridge is an unreasonable obstruction to navigation and, if it is, the process leading up to the issuance of an Order to Alter. The differences in the process between railroad or publicly owned highway bridges which are covered by the Truman-Hobbs Act (33 U.S.C. 511 *et*

*seq.*), and all other bridges are highlighted. Additionally, the note referring the public to chapter 6 of the *Bridge Administration Manual*, COMDTINST M16590.5A, has been deleted.

The contents of proposed § 116.05 remains the same, but the section was reworded to make it clear that the Coast Guard only has authority to alter bridges over navigable waters of the United States.

The subject matter discussed in proposed § 116.10, *Preliminary Review*, has been separated into two separate sections in the final rule, § 116.10 *Preliminary Review*, and § 116.15 *Preliminary Investigation*. Section 116.10 of the final rule now discusses in greater detail the type of information used, and procedures followed, by a District Commander during the Preliminary Review stage. Section 116.15 of the final rule now more clearly sets out the type of information which will be gathered by the District Commander during a Preliminary Investigation as well as the procedures used to decide whether the investigation goes forward.

A new § 116.20, *Detailed Investigation*, has been added to the final rule to explain this phase of a Coast Guard investigation conducted by a District Commander. This section sets out the type of information examined at the Detailed Investigation stage and procedures followed to determine if an Order to Alter should be issued. The section expands upon the more general guidance which was contained in paragraph (a) of proposed § 116.25.

Proposed § 116.15, *Public hearings*, has been expanded to provide greater detail concerning the public hearing and appears in the final rule as § 116.25. This section now clearly states that a public hearing takes place both as part of an internal Coast Guard investigation to determine if a bridge unreasonably obstructs navigation, and when there has been a Congressional determination that a bridge is unreasonably obstructive, to determine what alterations to the bridge are necessary.

A new § 116.30, *Chief, Bridge Administration Division Review and Evaluation*, has also been added to describe the information used by the Chief, Bridge Administration Division in making a final determination of whether a bridge unreasonably obstructs navigation and, if so (or in the case of a bridge declared unreasonably obstructive by Congress), what alterations will be required. Language from proposed § 116.20, discussing the navigational benefit/cost ratio prepared by the Coast Guard, has been